

# REPORT

ON THE

PETITION OF WM. L. MACKENZIE, ESQ.,



ACTING EXECUTOR

TO THE

ESTATE OF THE LATE ROBERT RANDALL, ESQ.,

OF CHIPPAWA.

*Printed by Order of the Legislative Assembly.*

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PRINTED BY ROLLO CAMPBELL,  
NO. 11, GARDEN STREET.

1853.

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# REPORT.

THE SPECIAL COMMITTEE to which was referred the Petition of WILLIAM LYON MACKENZIE, Esquire, Acting Executor to the Estate of the late ROBERT RANDALL, of Chippawa, Esquire, have the honor to Report:—

That they have devoted as much of their time as could be spared from other duties to the investigation of the important questions involved in the Petition referred to them.

They have received oral and documentary evidence applicable to the case, and carefully arranged the same for reference.

The property claimed, as part of the late Mr. Randall's Estate, is of great value, and many persons are interested in the ultimate result of this inquiry.

Your Committee, at this late period of the Session, forbear to express an opinion; they recommend however that the Evidence, herewith reported, be printed for the use of Members, with a view to the further consideration of the subject next Session.

They also recommend that any further Evidence to be offered in the matter at the next Session, by any party interested, may be likewise printed, when the same is received.

The whole, nevertheless, humbly submitted.

JAMES SMITH,  
Chairman.

14th June, 1853.

## MINUTES OF EVIDENCE

AND

## PROCEEDINGS OF THE COMMITTEE.

COMMITTEE ROOM,

*Saturday, 16th April, 1853.*

### MEMBERS PRESENT :

Mr. Smith of Durham; Hon. Mr. Robinson, Messrs. Christie of Wentworth, Fergusson, Wright of the East Riding of York, and Hartman.

Read the Order of Reference.

Mr. SMITH of Durham, called to the Chair.

Read the Petition referred.

Mr. Mackenzie attended the Committee, and having opened his case ;

It was Ordered, on motion of Mr. Christie, That such documents as are referred to by Mr. Mackenzie, and in his possession, be received and filed, for the future reference of the Committee.

The following were then handed in, viz :—

Original Patent from the Crown to Robert Randall, of Lots 38, 40, &c., of Nepean.

Copy of Petition of Robert Randall to Lt. Governor, dated 23rd Sept., 1808.

Plans marked A and B.

Original Lease, &c.

Robert Bell, Esq., called and examined, and states :—

That he resides in Bytown, on Lot No. 40, broken front Concession A, on the Ottawa. A large portion of this lot has been sold and built upon, since it came into the possession of Messrs. Sherwood and Britton. This lot adjoins the principal lots on which are built the town of Bytown. Cannot say, without reflection, how many live on the lot. It is of great value. There are about half a dozen buildings on the lot in the 1st Concession of 200 acres, but in Concession A the greater part is built over by occupants, as town property. The buildings have about half of them been built since 1845; these are the most valuable. Knows that Mr. Firth's original tavern stand was on lot 40, Concession A. As to the maps or plans filed and marked A and B, considers them correct. Was aware when he went to Bytown that the titles of this property were in dispute; it was generally known that the claims were made by Mr. Mackenzie, acting for some other party. This dispute may have had some effect on purchasers, but very little. Thinks a notice was published, warning against purchasing this property, by Mr. Mackenzie, in 1850; this was the first I ever saw.

Upon 39, Concession A, no improvements or enclosures were made by Mr. Rochester, except a small building erected since 1846. At present there are a large number of persons (labourers) living in buildings of a temporary character, a greater part of which were erected within the last five years; these parties had no particular liberty to occupy; I look upon them as squatters. The land is owned by Government. In 1846, Mr. N. Sparks had a few acres cleared and enclosed, on the westerly part, adjoining lot 38. On the part nearest the slides, several French Canadians resided in buildings they had built upon it. Mr. Rochester lives in the concession adjoining; his right to purchase lot 39, in the 1st, has been recognized by the Government; there could be no pre-emptive right in Mr. Rochester to lot 39, Concession A; he did not occupy this lot in 1846. He has told me repeatedly that he considered broken front lot 39, as belonging to 39, 1st Con. Knows, as a surveyor, that this is not the case; they are separate and distinct lots, in separate Concessions, and have no connection. I give this testimony as a surveyor, after having surveyed it under instructions from the Crown Land Department, in 1846. I am aware that lot 39, Concession A, was for a length of time reserved for public purposes, and part of it now absolutely required for landing rafts and for the use of the slides. As to the value of this lot, I estimate it to be from 5 to £8,000. I laid it out in city lots in 1846, after the Government had decided on Rochester's claim; this was done under instructions from the Crown Land Department.

Adjourned to the call of the Chair.

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*Monday, 25th April, 1853.*

PRESENT :

Mr. Smith, Chairman ; Messrs. Hartman, Christie of Wentworth, Fergusson, and Hon. Mr. Robinson.

The Committee deliberated upon the allegations and prayer of the Petition referred to them.

Mr. Mackenzie submitted and laid before the Committee further documentary evidence—

Which was received and fyled, marked (A) and (B).

Mr. Mackenzie also handed to the Chairman, a communication from Mr. Bell, which he requested might be received and added to the testimony given by him before the Committee at its last sitting.

After being read as followeth :—

QUEBEC, 16th April, 1853.

WM. L. MACKENZIE, Esq., M.P.P.

Sir,—Please have the following added to my evidence, given before the Committee this day, respecting Lot 39, Concession A, in Nepean on the Ottawa.

Yours, &c. &c. &c.,

R. BELL.

The practice as regards pre-emption could only allow a pre-emptive right on behalf of any person to one lot, and not to more. Lot 39, in Concession A, and lot No. 39, in Concession 1st, are, as already stated in different Concessions, having no connexion, separated by a road allowance one chain in width, which is now a public highway, and the lots do not exactly abut as parts of one lot, but pass beyond one another several chains.

I have seen the plan of A. J. Russell, Esq., for a canal across the said lot, to improve the Ottawa Navigation, and I would be willing to undertake to make that canal and take lot 39, in Concession A, as compensation for the work.

I have also seen a petition on behalf of Mr. John Rochester, signed by thirteen gentlemen, and dated at Quebec, 26th August, 1852. Three of the signers are of Bytown—all the others belong to other parts of the country, some of them one hundred miles from the lot in question, and can know but little respecting who made improvements upon the lot. Excepting William Stewart, I do not believe any of the signers referred to could point out the lot. I know of no fact or circumstance that would in any respect sustain what is averred in that Petition.

ROBERT BELL.

I want the above incorporated as part of the evidence, and not separate from it as supplementary or additional.

R. B.

Ordered, That it be fyled as documentary evidence.

The Hon. Commissioner of Crown Lands was called, and in reply to certain inquiries respecting lot 39, 1st Concession, and 39, Concession A, of Nepean, stated to the Committee, that he would give directions that any documents in his Department, having reference to these lots, should be placed at the disposal of the Committee, or delivered to the Clerk at any time.

Ordered, That the Clerk do procure from the Office of the Commissioner of Crown Lands, all documents having reference to the lots in question, that are not now before the Committee.

*Daniel McLachlin, Esq., a Member of the House, called and examined :—*

1. What improvements, if any, had Rochester made upon lot 39, Concession A, previous to 1848, or previous to 1836, or to 1852, in August?—The first building on lot 39, Concession A, Nepean, was erected in 1837, by a Canadian, and acknowledged that he did so as a squatter; and under the same circumstances many buildings have been erected since. I think there are as many as thirty families residing on this lot, in houses all of a temporary kind. I am not aware that Rochester ever made any improvements on this lot.

2. Are there any good buildings now on it?—There are none; the best one would probably cost £50.

3. Were any affidavits given to Mr. Durie in 1845, or at any other time, to prove that nothing had been on the lot?—There were; I have seen them.

4. Is the affidavit now shewn you, by Robert Reed, a true original?—I believe it to be a true document.

5. Who had made affidavits to their being no improvements?—James Skead and Duncan Stewart, who lived on the lots adjoining; there were others, but I do not remember them.

6. Did you purchase the right of a squatter on lot 39, Concession A?—I did; and was reported in possession by Clergy Reserve Inspectors Chitty and Roberts; in consequence of which I applied for the lot: other parties also applied. I afterwards abandoned my claim, as I knew the squatter, from whom I purchased, had not been in possession for five years. I subsequently offered the Government £10 an acre for this lot.

7. Did Rochester do any act to constitute ownership to this lot?—He never did; he claimed it as being part of the lot in the 1st Concession.

8. Was it known in Bytown when you came there in 1836, that lot 40 and its broken fronts were contested by Randall, or that the ownership was disputed in any way?—Some years after 1836 I heard of the dispute; I am not aware that it prevented any one from buying.

9. Did Firth offer to sell you any right he had to lot 39, 1st Concession, or the broken lot, before he sold to Rochester?—He did of the 1st Concession; he did not pretend to have any claim on Concession A. I took his papers to a lawyer, and after their examination, concluded he had no right to the lot, and consequently refused to purchase.

10. What is your opinion as to the value of lot 39, Concession A?—It is worth, in a block, £2,000; if sold out in lots it might probably bring more.

I would add, in reference to this lot, that the beach is necessary for the use of the slides, and a part of the lot for a canal.

And then he withdrew.

Adjourned till 10 o'clock, A.M., to-morrow.

Tuesday, 26th April, 1852.

#### MEMBERS PRESENT :

Mr. Smith, Chairman; Hon. Mr. Robinson, Mr. Hartman, Hon. Mr. Macdonald, Messrs. Wright, Fergusson, and Christie.

The Honorable George S. Boulton, a Member of the Honorable the Legislative Council, attended the Committee.

Mr. Boulton, by permission of the Committee, addressed it on the subject of the general allegations and matters contained in the Petition.

Mr. Mackenzie was allowed to reply, by way of explanation.

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Mr. Boulton withdrew.

The Committee deliberated.

Ordered, That the Honorable John Rolph, Commissioner of Crown Lands, be requested to attend the Committee on to-morrow, at 10 o'clock, A.M.; and that Wm. McDonald Dawson, of the Crown Land Department, be summoned to attend the Committee at the same time.

Adjourned till 10 o'clock, A.M., to-morrow.

Wednesday, 27th April, 1853.

MEMBERS PRESENT:

Mr. Smith, Chairman; Mr. Wright, Hon. Mr. Robinson, Messrs. Hartman, Christie, and Fergusson.

The Honorable John Rolph, a Member of the House, and Commissioner of Crown Lands, attended the Committee, in accordance with the Order of yesterday.

In answer to a question from the Chairman, Mr. Rolph stated, that to the best of his recollection, he was a member of a Committee of the House of Assembly of Upper Canada, in the year 1828, appointed upon a Petition of Robert Randall.

A printed copy of the Report of that Committee, in the Appendix to the Journals of the House, is shewn to Mr. Rolph.

Did you concur with the Committee in that Report?—I have no recollection of dissenting from it; I believe I concurred in it.

1. Are you Commissioner of Crown Lands?—I am Commissioner of Crown Lands.

2. What claimants have there been for lots 39, in the 1st Concession, and 39, Concession A, in Nepean?—As to 39, in the 1st Concession, the claimants have been, 1st. Robert Randall; 2nd. Isaac Firth; and 3rd. John Rochester.

As to 39, in Concession A, the claimants have been, 1st. Robert Randall (whose claim is continued now by Mr. Mackenzie, as his executor); 2nd. Daniel McLachlin; 3rd. John Rochester (continued now by Malloch and Rochester); 4th. numerous occupants of the town lots which were advertised for sale; and 5th. the Town Council of Bytown; other applications to purchase, based on no special claims, have also been made. Both lots have likewise been claimed as an endowment for the Episcopal Church at Bytown, by the Rev. S. S. Strong.

3. Are they the same, or different lots?—They are distinct lots, with a concession line and road of the usual breadth between them.

4. What evidence is there in your Department that Firth or Rochester have ever been in possession of lot 39, 1st Concession, or 39, Concession A, Nepean?—As to 39, in the first Concession, the evidence of Rochester's possession consists in the conjoint Return of the Clergy Reserve Inspectors, Chitty and Roberts, in 1844, and as this has never been questioned it would seem superfluous to add any additional evidence.

As to 39, in Concession A, the evidence of Rochester's possession consists of several affidavits, stating that he gave permission to take stones and wood from it; that he claimed it; that the Deponents understood it was his; that rent was paid or promised to him by occupants, in actual possession of the lot, &c. The only direct evidence of his possession is the affidavits of Charles Henry, that he occupied a house built, by Rochester, of Edward Hawley; that he ploughed and planted on it for Rochester, and the certificate (not under oath) of John Egan, Esq. M.P.P., and Joseph Aumond, Esq., that he has a house on it, and ten or twelve acres cultivated. To this might be added the evidence of P. Roberts, one of the inspectors, who,

although a party to the conjoint Report by himself and Chitty, by which McLachlin was returned as in possession, addressed a letter to the Commissioner, stating his opinion in favor of Rochester, grounded on a claim through Firth, who however, as stated in the Order in Council, of 20-22 June, 1846, "never pretended in any of his applications to the Government, that he possessed or desired to obtain it," and that "therefore, the claim to pre-emption set up by Rochester, falls to the ground."

5. What evidence have you in your Department, that Rochester and Malloch have not been in possession of these lots?—As to 39, in the 1st Concession, there is no evidence that it is not in the possession of John Rochester. As to 39, in Concession A, the evidence that it has not been in the possession of John Rochester, consists of the conjoint return of the Clergy Reserve Inspectors, in 1844; of the affidavits of Duncan Stewart, Donald McGregor, and of James Skead, Esqs. in 1845,—long residents on the adjoining lot,—that they knew of no occupancy or improvements by him; of the Petition of Daniel McLachlin, Esq. owner of an extensive milling establishment on the adjoining lot, and now M.P.P. for Bytown, in 1846; of the actual survey by Provincial Land Surveyor, Robert Bell, under instructions from the Department by Order in Council, in 1846; of the respective Memorials of the Merchants, of the Magistrates, and of the Corporation of Bytown, in 1852, which either directly or indirectly deny the occupancy on which the claim to pre-emption is based, and in the latter of which the Councillors declare the fact to be patent to the whole community by "personal observation and public notoriety" that there is no "visible thing" that could be so construed.

6. What evidence have you in your Department of any possession of these lots, or either of them by others?—As to 39, in the 1st Concession, it was in the possession of Robert Randall by lease, from 1809 to 1821: there is no evidence before the Department, that it has since then been in the possession of any other persons, than Firth and Rochester.

As to 39, in Concession A, it was also in the possession of Robert Randall by lease, from 1809 to 1821; and since then, by the conjoint Return of the Clergy Reserve Inspectors, it was found to be in the possession of Daniel McLachlin, principally, and of Ozias Banning, and Louis Dorin, partially, by two shanties they had on it; and by the general testimony before the Department, and the admission of the opposing claimants, Messrs. Malloch and Rochester, in 1852; it has been in the possession of about twenty families, who have petitioned to purchase the town lots they have occupied, since they were surveyed and advertized for sale.

7. Has Rochester had any possession that would give him a pre-emptive right?—My opinion on this head is fully expressed in the Departmental Reports which are already before the Committee; and I have only to add, that in my opinion (though in this I may be mistaken) no person can acquire a pre-emptive right to any lot expressly reserved by the Government for public purposes, nor would improvements, even were they made, avail against such public reservation; and further, there is no evidence of any occupation and improvement for five years antecedent to 1841, on which alone any pre-emptive right could accrue under the Order of the Queen in Council, based on the Imperial Statute.

8. What evidence is there in your Department of lot 39, Concession A, Nepean, being required for public purposes?—The evidence that lot 39, Concession A, is required for public purposes consists of an Order in Council, of 24th April, 1833, stating it to be "indispensably necessary to the public service"; of a letter from F. P. Rubidge, Esq. to the Department of Public Works (being an engineer, in the employment of that department), of 13th September, 1845, in which he states that it should be withheld from sale "for Government purposes, otherwise some land-jobbers will be getting it now and cause us to pay for it hereafter;"

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of a letter from Thomas C. Keefer, 29th September, 1845, stating that it will be required for slide purposes, and recommending that it be reserved; and of letters from the Department of Public Works to this Department, in 1845 and 1846, stating that it should "be reserved for public purposes," and particularizing a portion indispensable for the works then in progress; of the letters of Robert Bell, Esq., P.L.S.; of Daniel McLachlin, Esq., M.P.P.; of the Department of Public Works, and of the respective Memorials of the Merchants, of the Magistrates, and of the Corporation of Bytown in 1852, all stating the reservations for public purposes to be indispensable; the Memorials of the Corporation adding, the necessities of the town for water, to which the position of Bytown affords but few accessible points; and of the late official Report of Messrs. Russell and Merrill,—the one Surveyor of Timber Licenses, and the other Superintendent of Public Works on the Ottawa,—stating that the reservation, in respect of which their opinions were asked, is so indispensable that if it were alienated, they "would feel constrained by a sense of duty to recommend that immediate steps should be taken for the purchasing of it back again"; which has been fully sustained by another Report from the Department of Public Works, dated the 3rd May instant. Messrs. Russell and Merrill also add the necessities for water, &c., of Bytown, which being on "a high and rocky site," the shore is "elsewhere steep or precipitous," and "the slope of land to the river, and into it, in this place only, is very gentle."

In accordance with such testimony the Government, upon a fuller examination of the matter, made certain reservations, thus abundantly sustained, against which Governmental Reservations, Mr. Malloch has made the most unwarrantable objections.

9. What evidence is there in your Department that lot 39, Concession A, has been improved by Rochester and Malloch?—None, beyond that stated in answer to question No. 4.

10. What evidence is there to the contrary?—The evidence that lot 39, Concession A, has not been improved by Rochester or Malloch, has been stated in answer to question No. 5.

11. What better right, according to the rules of your Department, has Rochester than any squatter?—My opinion on this head is already fully expressed in the Reports which are before the Committee.

12. Has the Government, at any time, admitted the right to pre-emption, by Firth, Rochester, or any other person to lot 39, Concession A, or lot 39, in 1st Concession, Nepean?—The Government has at no period admitted the right to pre-emption in Firth to lot No. 39, in the 1st Concession, nor to lot 39, Concession A, for which latter he never applied.

To lot 39, in 1st Concession, such a right would seem to have been admitted in Rochester, by Order in Council, of 17th February, 1846; but this was cancelled, and the right denied by Order in Council, of 20-22 June, 1846, and also by subsequent Orders, although he was permitted to become the purchaser (of the part of that lot not required for public purposes), under a distinct denial of any pre-emptive right, but in consideration of his large improvements.

To lot 39, in Concession A, no such right has ever been admitted by the Government, either in Firth or Rochester, or any other person, up to the time of my investigation of the case, when presented conjointly by Messrs. Malloch and Rochester.

13. How and when did this lot become a part of Bytown?—Lot 39, Concession A, became part of Bytown in 1847, by the Act 10th and 11th Vic. cap. 43, being the first Session of Parliament after the survey into town lots, by Order in Council, in 1846.

14. How came it to be surveyed into town lots, and when was this survey made?

—Lot 39, Concession A, was surveyed into town lots by authority of Orders in Council, of 20–22 June, and 1st July, 1846; the survey was executed under instructions from this Department, of 15th July and 24th August, 1846, and completed in September of that year.

15. Were these town lots ever offered for sale, and on what terms?—The town lots were advertised for sale (as per Canada Gazette, of 8th January, 1848), upon application, on and after the 9th February following, at the prices therein stated.

16. Has any Patent been made out for lot 39, Concession A, in Nepean?—Patents have been prepared in this Department, in obedience to the Orders in Council, and submitted for the consideration of the Government.

17. If so, in whose name was it made out, and in whose possession is it, and how did it come into such possession?—The Patent was prepared in the names of John Rochester and Edward Malloch. I cannot say in whose hands it now is, because since it was sent to the Provincial Secretary, it has not reached this Department for transmission, according to 4th and 5th Vic., cap. 100, sec. 20.

18. Do you consider the lot to be patented in the full and proper sense of the term, so as to be altogether alienated from the Crown?—I have no evidence upon this point but what is before the Committee, and do not feel competent to give an opinion upon the question of title.

19. What persons, if any, have been reported by the Clergy Reserve Inspectors as entitled to a pre-emptive right to purchase, under the regulations respecting lot 39, Concession A, Nepean?—By the conjoint attested Return of the Inspectors, Daniel McLachlin was reported as being in possession of lot 39, Concession A, Nepean, with three acres cleared; but Mr. McLachlin, afterwards, voluntarily stated that the occupation under which he claimed, fell short of the five years antecedent to 1841, required by the regulations, and conscientiously waiving any claim to pre-emption, offered to purchase, first at five hundred and afterwards at a thousand per cent. advance on the valuation of the Inspectors.

JOHN ROLPH.

Adjourned to the call of the Chair.

Saturday, 28th May, 1853.

MEMBERS PRESENT:

Mr. Smith, Chairman; Messrs. Christie of Wentworth, Hartman, and Fergusson. It was Ordered, That the Clerk do give to Mr. Mackenzie copies of any papers before the Committee.

The Honorable Mr. Attorney General *Richards*, called in, and examined:—

1. Are you Attorney General for Upper Canada?—I am.
2. What claimants have there been for lots 39, in the 1st Concession, and 39, Concession A, in Nepean?—I know of no claimants, except those that may be exhibited by papers in the Crown Land Office.
3. Are they the same, or different lots?—I believe they are different concessions. Think several lots in those concessions have been granted.
4. What evidence is there in your Department that Firth or Rochester have ever been in possession of lot 39, 1st Concession, or 39, Concession A, Nepean?—There is no evidence in my Department with reference to the matter at all.
5. What evidence have you in your Department that Rochester and Malloch have not been in possession of these lots?—None.
6. What evidence is there in your Department of lot 39, Concession A, Nepean, being required for public purposes?—None.

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7. What evidence is there in your Department that lot 39, Concession A, has been improved by Rochester and Malloch?—None.

8. What evidence have you in your Department of any possession of these lots, or either of them by others?—None.

9. Has Rochester had any possession that would give him a pre-emptive right?—The opinion I have formed in this matter is from the facts that appear in the papers in evidence which are, as I understand, before the Committee.

10. What evidence is there to the contrary?—None.

11. What better right, according to the rules of your Department, has Rochester than any squatter?—There are no rules in my Department connected with the matter.

12. Has the Government at any time admitted the right to pre-emption by Firth, Rochester, or any other person, to lot 39, Concession A, or lot 39, in 1st Concession, Nepean?—The papers before the Committee will show the decision of the Government in the matter.

13. How and when did this lot become a part of Bytown?—I believe it was under the Act, as stated in the evidence of the Commissioner of Crown Lands.

14. How came it to be surveyed into town lots, and when was this survey made?—I presume by Order in Council. I have no personal knowledge of the matter, except from the papers referred to.

15. Were these town lots ever offered for sale, and on what terms?—I have no knowledge except from the same papers.

16. Has any Patent been made out for lot 39, Concession A, in Nepean?—I believe a Patent has issued for a portion of this lot.

17. If so, in whose name was it made out, and in whose possession is it, and how did it come into such possession?—I have no personal knowledge to whom it was given, but presume it is in the name of the person for whom it was issued.

18. Do you consider the lot to be patented in the full and proper sense of the term, so as to be altogether alienated from the Crown?—I do.

19. What persons, if any, have been reported by the Clergy Reserve Inspectors, as entitled to a pre-emptive right to purchase, under the regulations respecting lot 39, Concession A, Nepean?—That will appear from the papers referred to. I have no personal knowledge of the matter.

Mr. Mackenzie stated to the Committee, that he had nothing further to lay before them in support of his Petition.

Committee adjourned till Monday next, at 10 o'clock.

Documents given in evidence, this day, before the Select Committee on the Petition of William Lyon Mackenzie, as Executor to the estate of the late Robert Randall, Esq., M.P. for Lincoln County, relative to lot No. 40, in 1st Concession and broken front lot No. 40, in Concession A, both in Nepean, Carleton County.

WM. L. MACKENZIE.

April 25th, 1853.

## (A.)

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W. L. Mackenzie.*

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## No. 1.

FRANCIS GORE, }  
Lt. Governor. }

## PROVINCE OF UPPER CANADA.

GEORGE THE THIRD, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c.

To all to whom these presents shall come,

## GREETING :

KNOW YE, that We, of our special grace, certain knowledge, and mere motion have given and granted, and by these presents do give and grant unto Robert Randall, of the Town of Cornwall, in the County of Stormont, in the Eastern District, merchant, his heirs and assigns for ever; all that parcel or tract of land situate in the Township of Nepean, in the County of Carleton, in the District of Johnstown, in our said Province, containing, by admeasurement, Five hundred acres, more or less, with allowance for road between the broken front and first Concession; also, Four hundred and fifty acres, be the same more or less, being Lots number Thirty-eight and Forty, in the first Concession from the Grand or Ottawa River, and the broken fronts of said lots on the said Grand River. The broken Lots, numbers Ten and Eleven, in the first Concession upon the River Rideau. Lot number Eleven, in the second Concession, and the easternmost or front three-fourths of Lot number Ten, in the second Concession of the said Township of Nepean, together with all the woods and waters thereon lying and being, under the reservations, limitations, and conditions hereinafter expressed; which said nine hundred and fifty acres of land are butted and bounded, or may be otherwise known as follows: that is to say, commencing in front upon the Ottawa River, at the North-west angle of each of the said lots in the broken front respectively; then South, sixteen degrees East, one hundred and fifty-one chains, more or less, to the allowance for road between the rear of the said first concession, and the lot I, in the broken concession B, granted to Christian Wallaser; then North, sixty-six degrees East, twenty chains, more or less, to the easternmost limit of each lot; then North, sixteen degrees West, to the Ottawa or Grand River; then along the water's edge, following the several turnings and windings thereof, to the place of beginning in each parcel of land. Also, commencing in front of the said first concession upon the River Rideau, at the North-east angle of the said lot number eleven in the first concession; then South, sixty-six degrees West, one hundred and fifty-six chains, more or less, to the allowance for road between the second and third concessions; then South, sixteen degrees East, twenty chains, more or less, to the allowance for road between lots number eleven and ten in the second concession; then North, sixty-six degrees East, twenty-five chains; then South, sixteen degrees East, twenty chains, more or less, to the limit between lots number ten and nine; then North, sixty-six degrees East, one hundred chains, more or less, to the River Rideau; then northerly, along the water's edge with the stream, to the place of beginning. To have and to hold the said parcel or tract of land hereby given and granted to him, the said Robert Randall, his heirs and assigns for ever; saving, nevertheless, to Us, our heirs and successors, all mines of gold and silver that shall or may be hereafter found on any part of the said parcel or tract of land hereby given and granted as aforesaid; and saving and reserving to Us, our heirs and successors, all white pine trees that shall or may now or hereafter grow or be growing on any part of the said parcel or tract of land hereby granted as aforesaid.

Provided always, that no part of the parcel or tract of land hereby given and granted to the said Robert Randall and his heirs, be within any reservation heretofore made, and marked for Us, our heirs and successors, by our Surveyor General of Woods, or his lawful deputy, in which case, this our Grant for such part of

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the land hereby given and granted to the said Robert Randall, shall, upon a survey thereof being made, be found within any such reservation, shall be null and void, and of none effect, any thing herein contained to the contrary notwithstanding.

Provided also, that the said Robert Randall, his heirs or assigns, shall and do within three years, erect and build, or cause to be erected and built, in and upon some part of the said parcel or tract of land, a good and sufficient dwelling-house. The said Robert Randall, or his assigns, not having built, or not being in his or their own right lawfully possessed of an house in our said Province, and be therein, or cause some person to be therein resident for and during the space of one year thence next ensuing the building of the same.

Provided also, that if at any time or times hereafter, the land so hereby given and granted to the said Robert Randall and his heirs, shall come into the possession and tenure of any person or persons whomsoever, either by virtue of any deed of sale, conveyance, enfeoffment, or exchange, or by gift, inheritance, descent, devise or marriage, such person or persons shall within twelve months next after his, her, or their entry into and possession of the same, take the oaths prescribed by law, before some one of the Magistrates of our said Province; and a certificate of such oaths having been so taken, shall cause to be recorded in the Secretary's office of the said Province.

In default of all or any of which conditions, limitations and restrictions, this said Grant and every thing herein contained, shall be, and We hereby declare the same to be null and void, to all intents and purposes whatsoever, and the land hereby granted, and every part and parcel thereof, shall revert to, and become vested in Us, our heirs and successors, in like manner as if the same had never been granted; any thing herein contained to the contrary in any wise notwithstanding.

And whereas, by an Act of the Parliament of Great Britain, passed in the thirty-first year of His Majesty's reign, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province," it is declared, "That no grant of lands hereafter made, shall be valid or effectual, unless the same shall contain a specification of the lands to be allotted and appropriated solely to the maintenance of a Protestant Clergy within the said Province," in respect of the lands to be thereby granted: Now know ye, that We have caused an allotment or appropriation of One hundred and thirty-five acres and five-sevenths to be made in lots numbers two and seven in the fourth concession from the River Rideau, in the said Township of Nepean.

Given under the Great Seal of Our Province of Upper Canada: Witness Our trusty and well beloved Francis Gore, Esquire, our Lieutenant Governor of our said Province, this Twenty-fifth day of February, in the year of our Lord, One thousand eight hundred and nine, and forty-ninth of Our Reign.

By command of His Excellency in Council.  
WILLIAM FIRTH, Attorney General.

FR. G.

Entered with the Auditor, 27th February, 1809:

D. SELBY,  
Auditor General.

Patent Fee and Survey paid to the Acting Receiver General, 23rd February, 1809, under the Regulations acted upon the 6th July, 1804.

The interlined word "concession," being written before the Seal of the Province affixed.

W. J.

INDORSED.—Grant to Robert Randall, 950 acres, Nepean, District of Johnstown. Recorded in the Register's Office, 27th February, 1809. Wm. JARVIS, Registrar.

## No. 2.

### PROBATE OF MR. RANDALL'S WILL.

COURT OF PROBATE,  
Upper Canada,  
City of Toronto, to wit:

} PROBATE of the last Will and Testament of the late Robert Randall, of Willoughby, in the County of Lincoln, District of Niagara, and Province of Upper Canada, Esquire, deceased.

IN the name of God. Amen. I Robert Randall, of Willoughby, in the County of Lincoln, District of Niagara, and Province of Upper Canada, Esquire, being weak in body, but of sound and perfect mind and memory, blessed be Almighty God for the same, do make and publish this my last Will and Testament, in manner following, that is to say; First, I direct my body to be decently buried.—Item. I hereby appoint the Honorable John Walpole Willis, late one of His Majesty's Justices of the Court of King's Bench in this Province; William Lyon Mackenzie, of the Town of York, Printer; Thomas Hoornor, of Burford, County of Oxford, District of London, Esquire; and Jesse Ketchum, of the Town of York, Tanner, Executors of this my last Will and Testament. I hereby authorise my said Executors or the majority of them, or the survivor or survivors of them, to sell or convey by deed or otherwise, all my estate real and personal, for such considerations, upon such terms and in such manner as they may judge best, and to compromise upon such terms and in such manner as they may think best, any claim or claims for debts due to or from me, and to leave the same to arbitration, if they deem it advisable. And the moneys which they may receive on account of debts due to me or on account of the sale or sales of my said personal or real property, after deducting therefrom so much as shall be necessary to pay debts; I hereby give and bequeath, in the following manner, that is to say:—To Maria Stark, a widow, of Montreal, the sum of One hundred and fifty pounds, to remunerate her for her kindness and attention to me while I was in jail in Montreal; to a Canadian, by the name of ——— Bellonge, of Montreal, a shopkeeper, who also furnished me with money and necessities, for which I gave him my note of hand, the amount of which note I cannot now recollect, but by way of payment for said note and in gratitude for his kindness, I give and bequeath to him the said ——— Bellonge, the sum of Two hundred pounds; the remainder of my estate, if any, I wish divided into ten equal parts, and disposed of in the following manner, that is to say:—To my daughter, (by Deborah Pettel) Lavinia Culp, the wife of Isaac Culp, of Stamford, in the District of Niagara, blacksmith, and her four sons, two-tenths shares of the whole, to be divided equal between her, my said daughter, and her four sons, share and share alike; to Frederick Smith of Willoughby, aforesaid, farmer, and his children, Thaddeus, Maria, Frederick and William, Edwin and George, three-tenths of the whole, to be equally divided between them, the said Frederick Smith and his said children, Thaddeus, Maria, Frederick, William, Edwin and George, share and share

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alike; to my nephew, Gerard Gover Wilson, of Baltimore in Maryland, (the son of my half-brother Samuel Wilson,) and to his sisters that may be living at the time of my decease, two-tenths of the whole, to be equally divided between them the said Gerard Gover Wilson and his said sisters, share and share alike; to my nephew, Randal Wallace, one tenth of the whole; the remaining two-tenths to be divided between William Hewston, living somewhere in Nova Scotia, William Lyon Mackenzie, William B. Wilson, Thomas Hoornor, and Dorton John J. Jefferty, share and share alike. Hereby revoking all former wills by me made. In testimony whereof I have hereunto set my hand and seal, the second day of March, in the year of our Lord, One thousand eight hundred and twenty-nine.

ROBERT RANAL. [L.S.]

Sealed, signed, published, pronounced and declared by the Testator to be his last Will and Testament, in presence of us, who have hereunto subscribed our names in the presence of the Testator, and in the presence of each other.

Note.—The words "or the majority of them" first interlined.

(Signed,) JOHN CAWTHRA,  
(Signed,) JOSEPH N. LOCKWOOD,  
(Signed,) JNO. E. TIMS.

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GRIMSBY BAY, PORT COLBORNE, May 1st, 1834.

I, Robert Randall, of the Township of Humberston, in the Niagara District, and Province of Upper Canada, do bequeath unto my daughter, Mrs. Louisa Culp, of the Township of Stamford, in the said District, and Maria Smith, daughter of Frederick Smith, all the property owned by me in the said Township of Humberston, after my expenses are paid; the said property with all my accounts coming to me from the Canal Company, to be divided equally between the two above mentioned Legatees. Eighty dollars of the above mentioned expenses is for a wagon that is to be paid ninety days after date, by the two mentioned Legatees, to Mr. Culp, and all the rest of my property subject to the will, being previously made to this one, to remain as it is. There has been also, a verbal agreement between Henry Hoornor and me, respecting a small tract of land, situated in the said Township of Humberston, between two and three acres, at twenty dollars per acre, to be paid by the 1st of March, one thousand eight hundred and thirty-five, for said land, which I wish said Legatees to have and pay for, if it is their wish; there is also a certain memorandum drawn off by Wm. Lawyer McKensy, for the sale of two lots of land, eleven and twelve, in the Township of Young, District of Young, and Province of Upper Canada, to Messrs. Hunts; Doctor Peter Howard is agent. The said memorandum to be given to the above mentioned Legatees, to be divided equally between them. The memorandum, when forward, will give a full explanation.

ROBT. RANDALL. [L.S.]

Sealed, signed, and delivered, in presence of  
(Signed,) THOMAS H. WILDE, M.D.,  
DAVID T. CARY, and  
THADS. SMITH.

COURT OF PROBATE,  
Upper Canada,  
City of Toronto, to wit: } BY the tenor of these presents I, Grant Powell, Es-  
quire, Official Principal of the Court of Probate, in  
and for the Province of Upper Canada, do make known to

all People, that on the day of the date hereof, in the City of Toronto, in the Province aforesaid, before me was proved, approved and insinuated, the last Will and Testament, and Codicil thereto, of the late Robert Randall, of the Township of Willoughby, in the County of Lincoln, District of Niagara and Province aforesaid, Esquire, deceased, a true copy whereof is within written by me, and means whereof the the approbation and insinuation of the said last Will and Testament, and Codicil aforesaid, and committing the administration of all and singular, the goods and chattels, rights and credits which were of the said deceased at the time of his death; and also the auditing of the accounts, calculations and reckonings, and final admission of the same to me is manifestly known to belong: and administration of all and singular the goods and chattels, rights and credits of the said Robert Randall, deceased, mentioned in his said last Will and Testament and Codicil, is committed to William Lyon Mackenzie and Thomas Hornor, two of the Executors named in the said last Will and Testament of the said deceased; the said William Lyon Mackenzie and Thomas Hornor, well and truly administering the goods and chattels, rights and credits of the said Robert Randall, deceased, and making a true and perfect inventory thereof, and exhibiting the same into the Registrar's Office of the said Court of Probate, on or before the last Monday in March next ensuing the date hereof, and rendering a true account, calculation and reckoning thereof, when thereunto lawfully required; reserving to the Honorable John Walpole Willis and to Jesse Ketchum, the other Executors named in the said last Will and Testament, the right hereafter to come in and administer thereto according to law.

In testimony whereof I have hereunto set my hand and affixed the Seal of the the said Court of Probate, this seventh day of June, in the year of our Lord, One thousand eight hundred and thirty-four.

GRANT POWELL,  
Official Principal.

JAS. FITZGIBBON,  
Registrar, Court of Probate.

#### COUNTY OF CARLETON REGISTRY OFFICE.

I do hereby certify that a memorial of the within Probate of a Will, attested by John Edward Tims, of the City of Toronto, Physician, before J. H. Price, a Commissioner in the King's Bench, as far as regards all real estate in the County of Carleton, hath been duly recorded in the Office of Registry for said County, at the hour of nine o'clock, forenoon of Monday, the eleventh day of January, in the year of our Lord, one thousand eight hundred and thirty-six, in Book No. 4, page 200. Number of Memorial, 919.

GEO. T. BROOKE,  
Dep. Reg. County Carleton.

I do hereby certify to have received the within written documents, the eighth day of January, in the year of our Lord, one thousand eight hundred and thirty-six, at one of the clock in the forenoon, and the same is recorded at my Office in Hull, Book 3rd, pages 17, 28, 29, and documents 25, 26, 27.

JAMES F. TAYLOR,  
Registrar, County of Ottawa, L.C.

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Nº3



*Plan of Lots 40. Con: 1 and 40 Con: A. Nepean  
and 39 in said Concessions in part.*

*Certified by M<sup>r</sup> Bell, Surveyor, to be correct.*

*Note. M<sup>r</sup> Firth's Tavern is marked & shaded blue*

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JAMES F. TAYLOR,  
Registrar, County of Ottawa, L.C.

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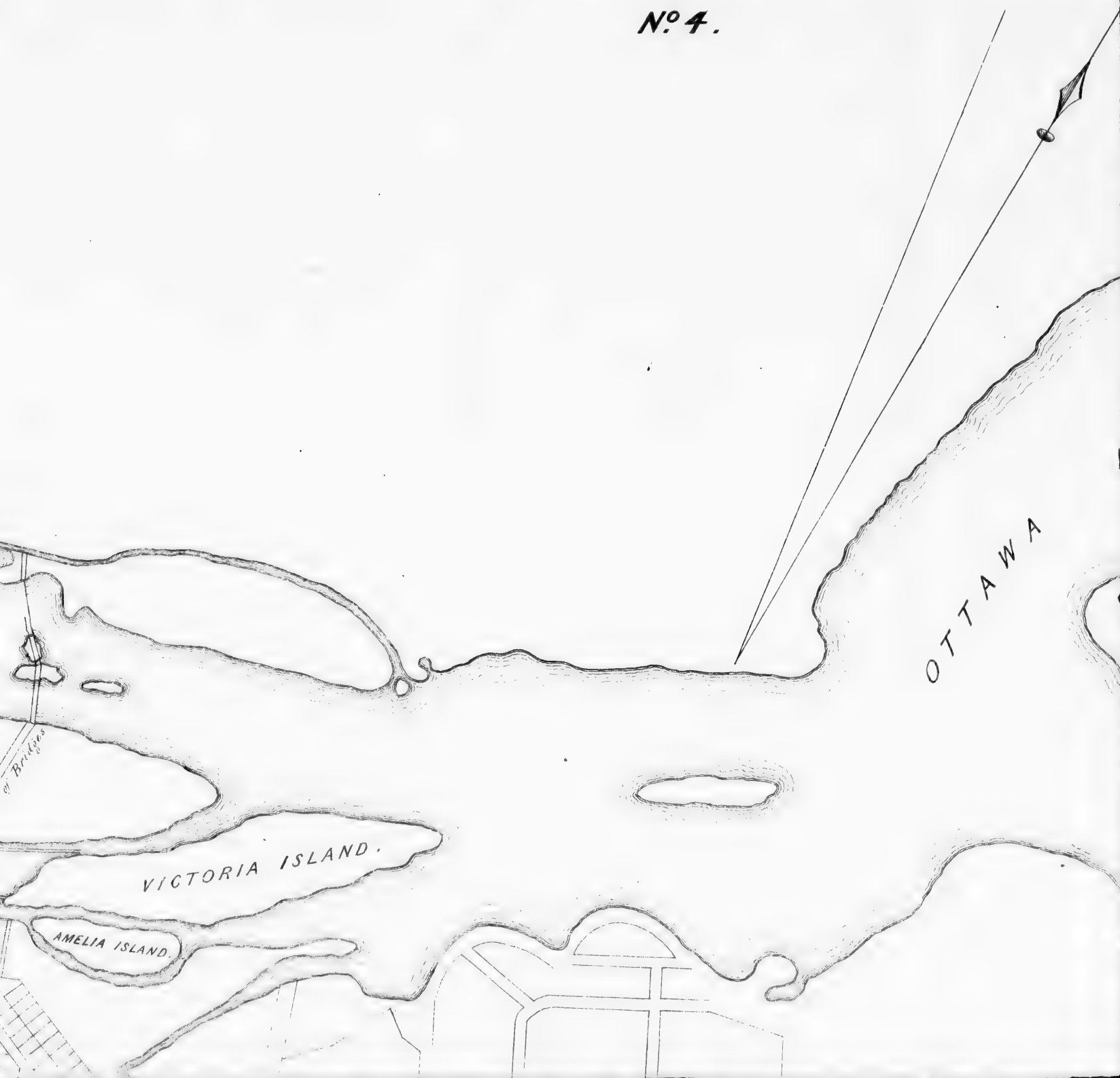
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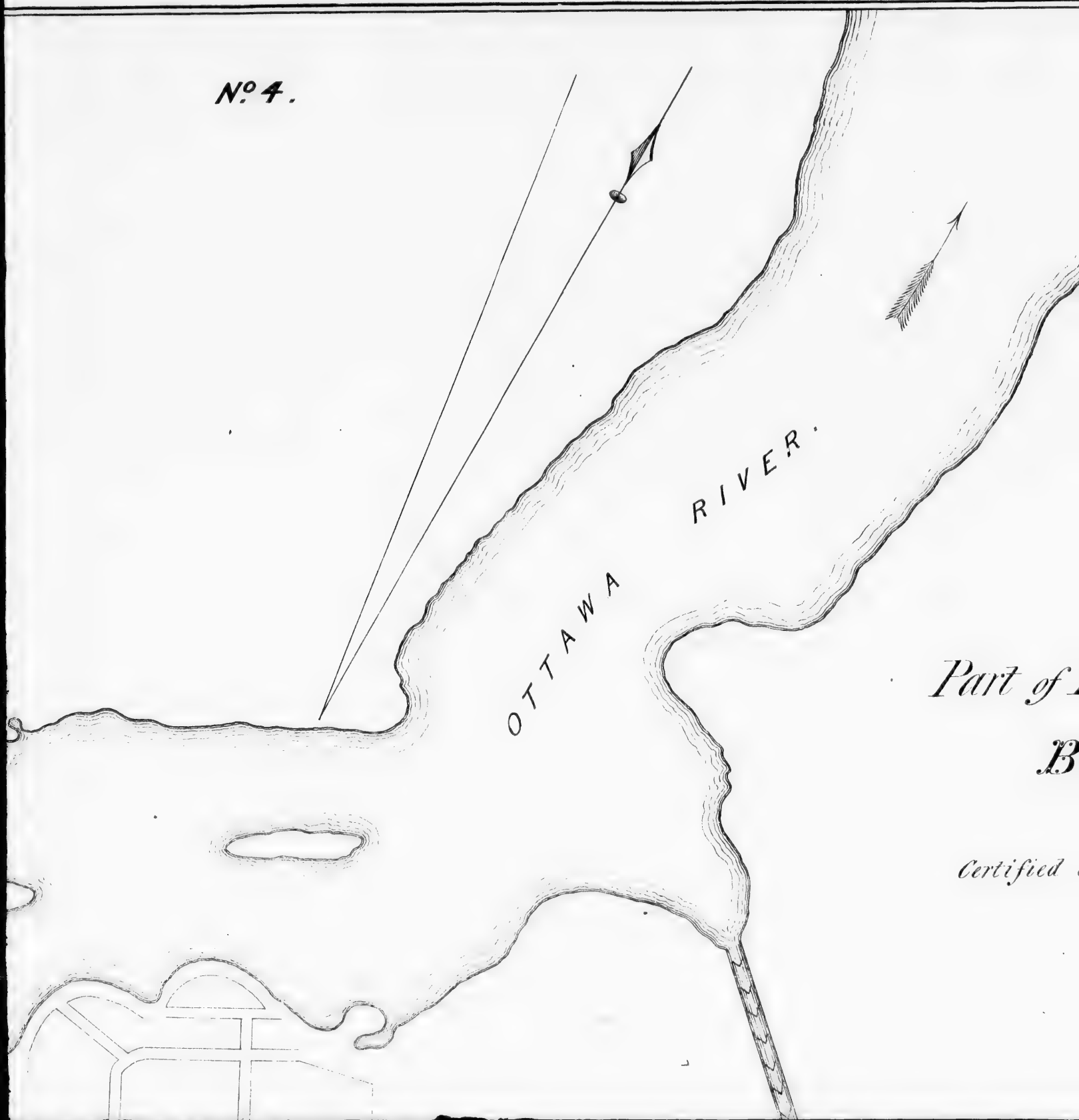
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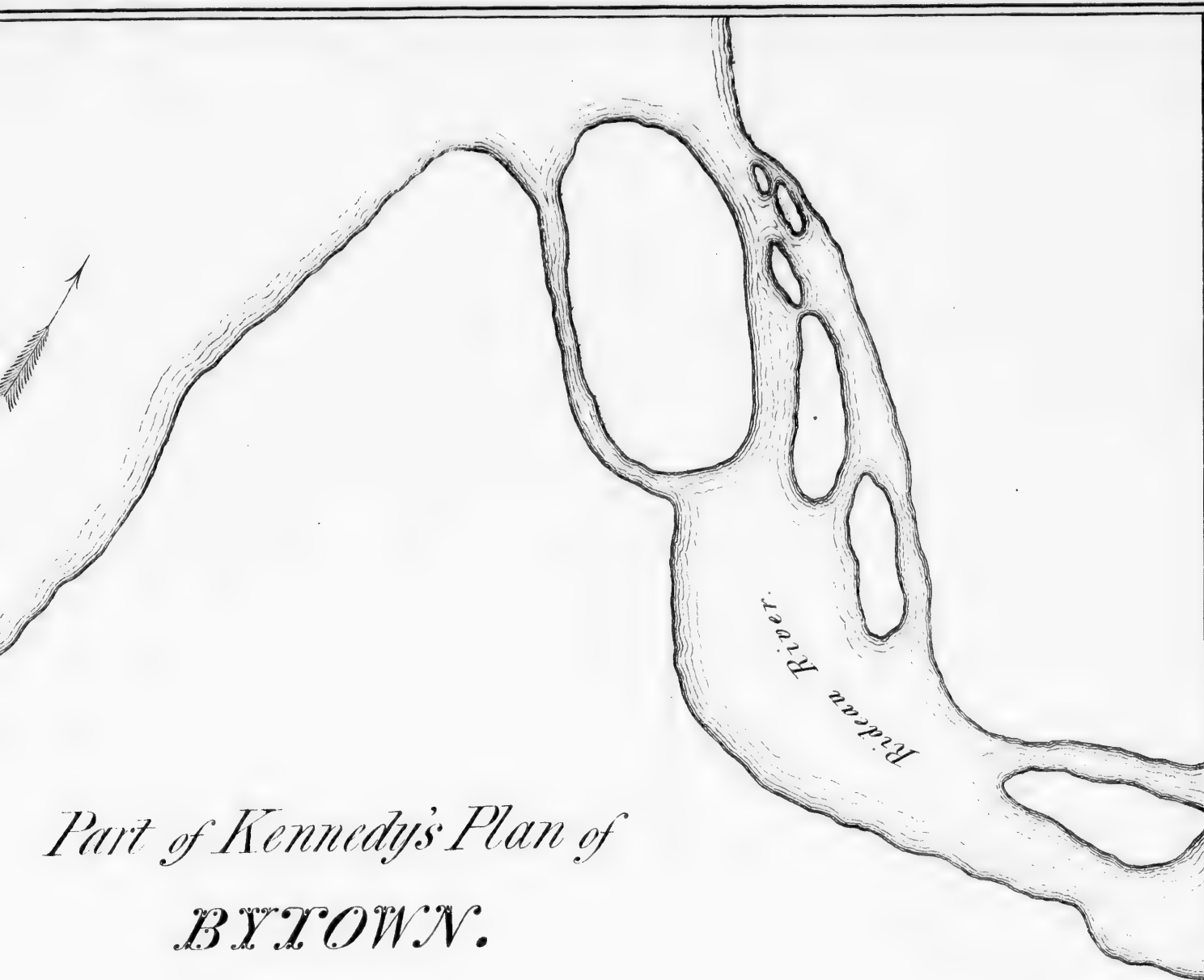


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*Part of Kennedy's Plan of*  
**BYTOWN.**

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*Certified as Correct by M<sup>r</sup> Bell.*

MATTHEWS' LITH.



*Lot No 39*

*Con: A.*

*Richmond Road.*

*Part of Lot 3*

*1<sup>st</sup> Con:*

*Lot No 39*

*Con: A.*

*Canal.*

*Part of Lot 39.*

*1<sup>st</sup> Con:*

*Part of Lot 40*

*Con: Line C.*

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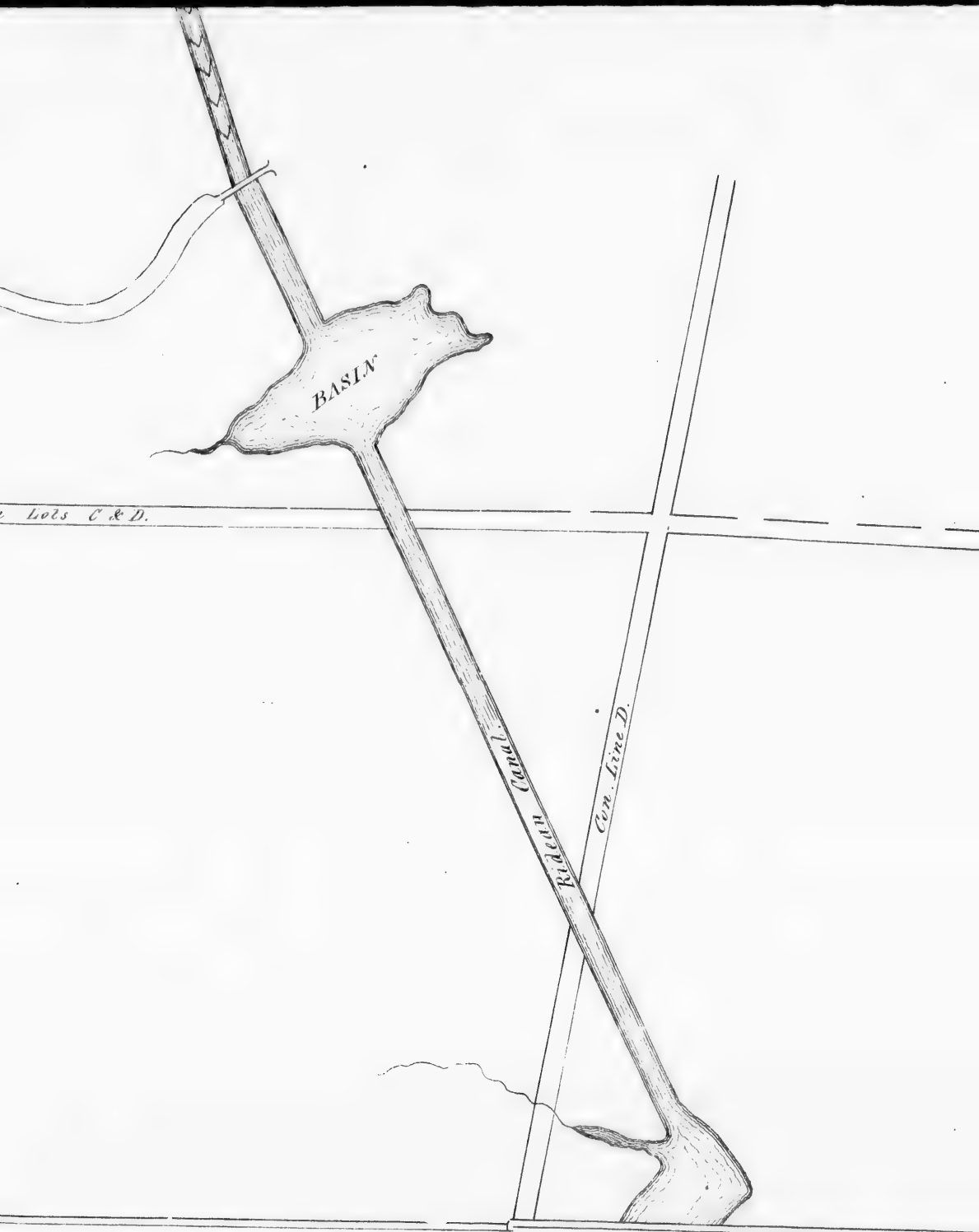
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This, Sir, requires an explanation. There are four small islands at or near the Chaudière Falls, which lay so situated as to make them actually necessary to be procured for the purpose I have in view, which is to extend a dam, from the main bank to the upper islands, lying at the Falls, and taking the water between the main and said islands, for the purpose of a grist and saw mill. The Ottawa River is very narrow at the Chaudière Falls, therefore you will find the distance to be but short, from the main to the channel of the river, and the quantity of acres which those islands contain cannot exceed 20, but government not having it in their power to grant islands, makes it necessary to apply in this way, as government can make a grant in this way that will be as effectual as if the islands were expressed in the deeds, but should the broken fronts of Lots Nos. 38, 39 and 40 not be sufficient to fill my claim, you will please to lay the claim upon the broken front, let there be what quantity there may, and let my petition lay open for the deficiency to be laid in some other place. Provided that Lot No. 39 should not be reserved for the clergy, and that Lots Nos. 38 and 40 should not be granted; please to lay my claim upon as much of the fronts as the same will cover, comprehending the privileges of the waters of the river, and bound by the channel of the said river as already described, provided there should not be broken fronts to the aforesaid Lots, and that 38 and 40 have already been granted, and should No. 39 be reserved for the benefit of the Crown, endeavour to prevail on government to allow my claim to cover it; with the privilege of said waters and islands as described. But should government not allow my claim to cover No. 39, and should the said Nos. 38 and 40 be already granted, as likewise there may not be any broken fronts; in that case take out a lease for me for No. 39, and endeavor to get a grant from the bank of the West line of No. 39, running to the channel of the river, ten chains below the East line of Lot No. 40, to the main bank including all lands, which is those small islands. I have enclosed my bond together with my bondsmen, for the annual payment of the lease; you will also call upon Captain Farquharson for my letter directed to Thomas B. Gauf, Esquire, who, Mr. Chewitt says, was at New York, and had not returned when he left home. You will get Captain Farquharson to open my letter, favored by Mr. Burns to Mr. Gauf, in order that you may get my certificate as having taken the oaths required by Government. Should Captain Farquharson not be in possession of my letter to Mr. Gauf, please to call on Mr. Burns, (I think his christian name is William,) I had the pleasure to see him at Cornwall on his way from Quebec to York, on the 8th July last. I enclose you a guinea, and, as I am informed that most of the landed business sent to your care is conducted through the different offices by your son, and further reasonable charge he may make shall be cheerfully paid by a draft at sight, or otherwise, in favor of any person in Cornwall. As Government is knowing to my arduous undertaking at the Bridgewater Works, near the Falls of Niagara, and my perseverance in this kind of business, I flatter myself the Governor in Council will be disposed to encourage me all in their power in commencing business at the Chaudière Falls, on the Ottawa River; it will be the means of settling the wild lands on that river, that is at this present a perfect wilderness, not one settler inhabiting the country: it will be the means of settling the lands upon that line of the Province, which I conceive to be much required. The fees required in getting out my patent, if in your power to procure one, I shall pay to your order in Cornwall on demand. You will greatly oblige me to hasten the business as much as in your power, and forward the deed and lease by the first safe opportunity that may offer, as I am very anxious to get out my timber and build my dam before the freezing of the waters.

I fully expected my letter would have found my friend, Mr. Gauf, in York, on Mr. Burns' arrival, and expected at all events to have heard from my business by you when last down at Cornwall Court, at my return from Quebec. The acquaintance which I have had the honor to have with you, makes me trust you will use

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your interest for me. You can observe to the Governor, that the Parish of Cornwall must : so feel itself under a small compliment, for having built the Church.

Relying upon your usual goodness,

I subscribe myself,

Your most obedient and humble Servant,

(Signed,) ROBERT RANDALL.

D'ARCY BOULTON, Esquire.

## No. 8.

Mr. Randall to Judge Boulton.—Lots in Nepean,

[From Appendix to Journals of Assembly, U.C., 1830.]

Dear Sir,—I enclose you a draft drawn by Mr. Chewitt, on the Receiver General, at York, for £2 9s. 6d., Halifax Currency, which you will please to apply towards the payment of the fees, should a grant for 200 acres of land be made to me by Government; but should Mr. Gauf have returned from New York, and has laid my memorial before the Governor in Council, you will please to give the enclosed draft to him for the aforesaid purpose. Mr. Chewitt leaves this place much later than I expected. Should my business be done through you or Mr. Gauf, you will be very obliging by writing me immediately what Government is likely to do; but should you obtain the lease and grant, I will acknowledge it a great favor to have them sent to me as quick as possible, as I am very desirous to build a house at the place before the winter sets in, in order that I may be preparing timber, and making necessary arrangements for my works.

I am, Sir, with great respect,

Your humble Servant,

(Signed,) ROBERT RANDALL.

D'ARCY BOULTON, Esquire.

P.S.—Should 38 and 40 be granted, please for to write me in whose name they are granted.

## No. 9.

Hon. Henry J. Boulton to Mr. Randall.

[From Appendix to Journals of Assembly, U.C., 1830.]

YORK, July 2nd, 1808.

Dear Sir,—I am sorry to inform you that Lots Nos. 38 and 40, first Concession, on the Ottawa, were both taken up. No. 40 by Epr. Jones, Esquire, and 38 by Mrs. Jessup, four or five years ago. No. 39 is a reserve, and you are the first applicant. I this day endeavored to get it through the Council; but when it was referred to the Surveyor General to report what sort of timber was on it, they would not say, so you will be so good as to get some respectable man to look at the land and make oath before a Magistrate what the timber is, or get a Magistrate to certify it.

We wrote you before, but we supposed the letter miscarried, now we resume our old one.

I have the honor to be, Sir,  
Your most obedient Servant,

H. J. BOULTON.

I suppose you do not wish now to have your Petition presented, as cannot get the Lots you wished. My father is of opinion you may run your dam across to the Island without any apprehension of being disturbed.

H. J. B.

## No. 10.

Mr. Randall to Judge Boulton.

[From Appendix to Journals of Assembly, U.C., 1836.]

CORNWALL, July 23rd, 1808.

Sir,—I received a letter from your son, H. Boulton, dated July 2nd, informing me that Lots Nos. 38 and 40, first Concession, on the Ottawa River, in Township of Nepean, are granted, and that some requisites are required before a lease can be taken for No. 39. But his saying nothing respecting the broken fronts adjoining to those numbers, which was the land I wished you to apply for, and to cover them by my claim should they not be granted, makes me suppose you have not understood the tenor of my letter; I have therefore empowered my friend Mr. Rudsdell to act for me, in the business; any assistance you can give him, will greatly oblige me. You will please to furnish him with my writings committed to your care.

I am, your humble Servant,

ROBERT RANDALL.

D'ARCY BOULTON, Esquire.

## No. 11.

Randall's Instructions to Mr. Rudsdell, relative to Lease and Grant in Nepean.

[From Journals of Assembly, U.C.—Appendix, 1836.]

Mr. Randall's instructions to Mr. Rudsdell, in behalf of the business committed to his care at York.

Mr. Rudsdell will please call at the Executive Council Office as soon as he may arrive at York, and inquire of the Clerks whether a Petition has been laid before the Council in behalf of Robert Randall, for 200 acres of land, agreeable to the regulations providing for settlers, and if so, whether the same has been acted upon, and what the decision was. Should Mr. Rudsdell find there has not been an application made to the Executive Council in behalf of Mr. Randall, in that case he will hand in the Petition which he holds, to the Clerk of the Council, and beg of the Clerk to immediately lay the Petition before the Council, and when the Council shall have granted the prayer of the Petition, Mr. Rudsdell will please to take the order from the Council Chamber to the Surveyor General's Office, then request the Surveyor General to lay the diagram of the Township of Nepean before him,

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and examine the broken fronts adjoining Lots Nos. 38, 39 and 40, bounded by the waters of the Grand River at or near the Chaudière Falls, and mark the letter R on the said three broken fronts, then lay the order in Council on the said three broken fronts, producing his power of Attorney to the Executive Council as well as to the Surveyor General, as being legally authorized to act for and in behalf of Mr. Randall. Should the Surveyor General object to his laying the order on the said broken fronts, Mr. Rudsdell will inquire how long it has been since they were granted and in whose name,—should he be answered in the name of Ephraim Jones, the Clergy of Upper Canada, and Mrs. Jessup, Mr. Rudsdell in that case will please to call at the office of the Secretary of the Province, and there examine the lines of the grants made of Lots Nos. 38 and 40, and see whether the Government has granted the said broken fronts with the Lots Nos. 38 and 40, but should the said broken fronts be applied for by any other person, Mr. Rudsdell will please to know the date of the application, and if the application has been since the date of Mr. Randall's letter to Mr. Boulton, Mr. Rudsdell will then ascertain why Mr. Boulton has let my Petition lay over to be superseded by another claim, and should he discover that Mr. Boulton may have acted with interested views, he will then remonstrate to the Governor and show my instructions and Petitions committed to the care of Mr. Boulton. Mr. Rudsdell will explain to the Governor the suspense I have been kept in, and my object for wishing my claim to cover the said broken front, and that my views are to erect Water Works, such as Grist and Saw Mills, and a Forge for making Iron; that I have purchased from the Government of Lower Canada, lands opposite to the said broken fronts the distance of four miles, containing an extensive body of the best and richest Iron Ore; and as the said broken fronts are bounded by the waters at or near the Chaudière Falls, which admits of a situation for erecting such works, and that the lands lying between said Grand River to the River St. Lawrence, admit of settlement, which is not the case a distance of five miles in rear said River on the north side Province of Lower Canada, for which reason Mr. R. is desirous of erecting his works on the Upper Canada side, at the Chaudière Falls, which will be convenient in his getting his Ore to his works. Should those fronts not be granted, and the Surveyor General admits of my claim, covering the broken fronts adjoining Lots Nos. 38 and 40, but objects to the claim covering the broken front adjoining Lot No. 39, as being reserved for the benefit of the Clergy, Mr. Rudsdell will please to apply to the Governor and solicit the Governor to permit Mr. R.'s claim to cover the said broken front adjoining Lot No. 39, together with the grant of the small rocky clumps or islands lying in front of said Lots with a line beginning from the north-west corner line of Lot No. 39, and running to the channel of said River, and from thence down the River with the said channel 10 chains below the north-east corner line of Lot No. 40, including said bank and water, together with the said rocky clumps or islands lying within the said line; the timber growing on said broken fronts is mostly small cedar and spruce pine, commonly called a cedar thicket, and the soil scarcely to be cultivated, being extremely rocky;—the distance from the main to the rocky clumps or islands is about 60 feet, and except in the time of high water the passage is almost dry, the islands having the same growth of timber as the broken fronts, and the soil the same, and that the said rocky clumps or islands cannot contain more than twenty acres. By extending a dam from the main to one of the nearest rocky clumps and throwing a wing out into the main River, will command a sufficiency of water for Water Works, and except for building works of the aforesaid description, a grant of said broken fronts and islands would not be worth possessing, but by erecting such works it will bring on the settlement of the lands in that part of the Province which is totally uninhabited, which no doubt Government will be disposed to encourage, and as Government has granted to Messrs. Shuter and Mears, an island large enough to admit of a snug farm, and the soil of the best quality, lying at five times the distance from the main, and having a considerable depth of

water between the main and the island the dryest season of the year, Mr. R. therefore flatters himself Government will be equally disposed to give him as much accommodation; and as the broken front of Lot No. 39 lays so near the place where Mr. R. wishes to build, he prays that Government may encourage him by taking off the reserve, so that he may have the fee simple of the land. When Mr. Rudsell marks the letter R upon the said broken fronts, he will likewise mark the same letter on the rocky clumps or islands, and claim the same as broken fronts, as the passage between the main and said islands is dry a considerable part of the year, but should Mr. Rudsell find it out of his power to procure the broken fronts adjoining Lots Nos. 38 and 40, he will in that case endeavor to get a grant of the broken front of Lot No. 39, including the said islands and water courses within a line, beginning at the north-west corner of Lot No. 39, running with the channel of the River 10 chains below the north-east corner of Lot No. 40, but should Government not allow my claim to cover the broken front adjoining Lot No. 39, endeavour to get a grant of the islands and water courses as described, and take out a lease for the reserve Lot No. 39, and lay the remainder of my claim on the broken fronts of Lots Nos. 20 and 21, laying on the River about 4 miles above the Chaudière Falls, in the said Township of Nepean. And should Mr. Rudsell succeed in getting a grant of the said islands and broken fronts of Nos. 38, 39 and 40, and should there not be a sufficiency of land to fill up my claim of 200 acres, he will please to lay it upon as much of the broken fronts of Lots Nos. 20 and 21, bounded by the waters of the River as the deficiency may cover, covering also a small island opposite the north-west corner line of Lot No. 21; should Government persist in not giving a grant of those four rocky clumps or islands, in that case Mr. Rudsell will take out a lease for the same, for as long a time as he can.

Cornwall, July 23rd, 1808.

## No. 12.

### Certificate of W. McGillivray, Esq., relative to Lands in Nepean.

[From Journals of Assembly, U.C.,—Appendix, 1836.]

To His Excellency FRANCIS GORE, Esq., Lieutenant Governor of Upper Canada, &c., &c., &c., in Council.

Having been applied to by Jonathan Rudsell, late Attorney for Robert Randall, for our opinion whether the erecting a Mill Dam on the south side of the Grand or Ottawa River, Province of Upper Canada, in the Township of Nepean, and near the Falls of the Chaudière, will in anywise interfere or obstruct the passage of canoes or boats navigating the said river, the said dam to run from the main shore to an island in the river, a distance of about sixty feet.

We do hereby declare, for the information of His Excellency the Governor and the Council of Upper Canada, that the said Mill Dam will not, in any manner, interfere with, or obstruct the navigation of canoes or boats in the Grand or Ottawa River, the usual route for boats and canoes being on the north side.

Given under our hands, in the City of Montreal, this fifth day of October, in the year One thousand eight hundred and eight.

W. MCGILLIVRAY,  
Agent, N. W. Co.

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## No. 13.

## Judge Boulton to Mr. Randall.—Land in Nepean.

[From Journals of Assembly, U.C.,—Appendix, 1886.]

YORK, 30th January, 1809.

Dear Sir,—I acknowledge the receipt of your several letters, and am much mortified that you should think yourself neglected. Your affair has been repeatedly before the Council, so anxious have I been on your account, that I have personally attended the Governor, also the Chief Justice, out of Council, and exerted my personal interest in your favour. Though you are ordered personally to attend, I still hope to get through without; I am promised another hearing next Council. As to writing, I have once or twice written to you myself; and John Robinson whom you know to be with me, has also written to the care of Mr. Cozens—this will go under that address by a gentleman I can depend upon. You may rely on my exertions, and I think you will ultimately succeed. The certificates, &c., are very satisfactory. I was at the Council office yesterday. My son Henry also wrote to you on the reserve. The Council wanted an affidavit of the species of timber on the Lot—the reason of which is evident—that where, on the banks of our waters, we have either oak or pine, they reserve them for the navy, &c.

Yours most faithfully,

D'ARCY BOULTON.

ROBERT RANDALL, Esquire,  
Ottawa River.

I shall have to advance the forty dollars before location, shall consequently draw on you the moment I have certainty of success.

## No. 14.

## Petition of R. Randall, for Lands in Nepean.

To His Excellency FRANCIS GORE, Esq., Lieutenant Governor of the Province of Upper Canada, &c., &c., &c.

IN COUNCIL.

The Petition of Robert Randall, of Cornwall, in the Eastern District of the Province of Upper Canada, Merchant;

HUMBLY SHEWETH:

That Your Petitioner has been an inhabitant of the Province of Upper Canada since the year 1799, has taken the Oath of allegiance, &c., and has never received any land or order for land from the Crown.

Wherefore Your Petitioner prays Your Excellency will be pleased to grant him two hundred acres of His Majesty's waste lands as a settler, and to permit D'Arcy Boulton, senior, of York, Esquire, to be his Attorney to locate said land in the Township of Nepean, and receive the Patent when the same shall be completed, who engages to attend to the same agreeably to the existing regulations.

And Your Petitioner will pray, &c.

(Signed,) ROBT. RANDALL.

Signed before me at Cornwall, this 23rd day of September, 1808.

(Signed,) J. G. COZENS, J.P

I certify that Robert Randall, the above Petitioner, is the person he describes himself to be, has taken the Oath of allegiance as prescribed by Law, and to the best of my knowledge and belief has never received any land or Order for land from the Crown.

Given under my hand at Cornwall, this 23rd day of September, 1808.

(Signed,) J. G. COZENS, J.P.

ENDORSED.—The Petition of Robert Randall. Received 1st November, 1808, from Mr. John Robinson. (Signed,) John Small. Lt. Governor's Office, York, 8th November, 1808. Referred to the Executive Council by Order of the Lieut. Governor. (Signed,) Wm. Hatton, Secretary. Certified, Wm. H. Lee, Actg. C.E.C.

To His Excellency, FRANCIS GORE, Esquire, Lieutenant Governor of the Province of Upper Canada, &c., &c., &c.

IN COUNCIL.

Petition of Robert Randall, of the Town of Cornwall, in the Eastern District of the Province of Upper Canada, Merchant;

HUMBLY SHEWETH:

That your Petitioner has been resident of this Province ten years or thereabouts.

That he was the original Proprietor and Builder of the Bridgewater Mills, in the District of Niagara, being the first Mills in this Province that manufactured Flour for the European Markets.

That he was the Contractor for, and built the Church in the Town of Cornwall, whereby he sustained a considerable loss.

That your Petitioner took the oath of allegiance to his present Majesty on his becoming a resident of this Province.

Your Petitioner, therefore, prays Your Excellency, in Council, will be pleased to grant him such a proportion of His Majesty's waste Lands as Your Excellency, in Council, may think meet, and your Petitioner, as in duty bound, will ever pray.

(Signed,) ROBT. RANDALL.

YORK, 20th February, 1809.

RECEIVER GENERAL'S OFFICE,

23rd February, 1809.

Mr. Robert Randall has paid into this Office, Forty-five pounds, eleven shillings and seven pence half-penny, Halifax currency, equal to £41 Os. 5d., sterling, for Patent Fee on 1000 acres of Land, granted by Order of Council of this day, under the Regulations of the 9th January, 1804.

(Signed,) P. SELBY,  
Acting Receiver General.

To JOHN SMALL, Esquire,  
Clerk Executive Council.

READ IN COUNCIL, February 29th, 1809.

The Petitioner recommended for 1000 acres of land, under the Regulations of the 6th of July, 1804.

(Signed,) THOS. SCOTT, Chairman.

Robert

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(Signed,) FRANCIS GORE,  
Lieutenant Governor.

Robert Randall: Referred to the Executive Council.

(Signed,) FRANCIS GORE,  
Lieutenant Governor.

Certified.

WM. H. LEE,  
Act. C.E.C.

## No. 15.

[From Journals of Assembly U.C., 1836.]

REGISTER OFFICE FOR THE COUNTIES OF LEEDS, GRENVILLE AND CARLETON.  
Elizabethtown, 5th February, 1811.

I hereby certify that no memorial of any deed, conveyance, or other incumbrance from Robert Randall, to any person whatever, appears registered in the Books of this office affecting the following parcels of land, that is to say, Lots Nos. 10 and 11 in the sixth concession of Yonge; broken Lots, Nos. 10 and 11, in the first concession of Nepean; Lot No. 11 in the second, and the easternmost, or front, three-fourths of Lot No. 10 in the second concession of Nepean.

LEVIUS P. SHERWOOD,  
Registrar.

## No. 16.

Mr. Moor to Mr. Randall.

[From Journals of Assembly, U.C., 1836.]

Sir,—I have been put in peaceable possession of the place at the foot of the Chaudière Falls, which belongs to you, Sir, by John Torry, late agent for you at this place; and he having absconded from this place to the United States, and I having some property in my care which belongs to you, as I am informed, I desire that you would inform me by letter or otherwise, how I am to dispose of it for your benefit. Providing I remain on your place, I will take the best possible care of such things belonging to you which are entrusted to my care; but if I should see cause to leave your place, I wish to know of you how I am to dispose of things in my hands, delivered to me as your property. I will likewise inform you that the greater part of your property here was deposited by Mr. Torry, in the care of Samuel Benedict, senior. Now, if you desire me to take charge of those things, I desire you to inform me and give me such credentials as will enable me to secure the same for you.

I am, Sir,  
Your most obedient and very humble Servant,  
ROGER MOOR.

Nepean, 12th March, 1813.

## No. 17.

## Petition of R. Randall to Lieutenant Governor Gore.—Lands in Nepean.

[From Journals of Assembly, U. C., 1836.]

To His Excellency FRANCIS GORE, Esquire, Lieutenant Governor of Upper Canada, &amp;c., &amp;c., &amp;c.

The Petition of ROBERT RANDALL,—Humbly Sheweth.

That in the month of February, eighteen hundred and nine, Your Excellency in Council issued your warrant for one thousand acres of land in favour of your Petitioner, the patent and survey fees being duly paid to the acting Receiver General, on the 23rd day of February, 1809. That your Petitioner only received a patent for 950 acres, reserving 50 acres of the warrant for a future location, which your Petitioner intended might cover some rocky chasms, which properly belong to the broken front of Lot No. 40, in the first Concession, on the Grand River, in the Township of Nepean, District of Johnstown, which said Lot bears a portion of your Petitioner's location, out of the nine hundred and fifty acres. That your Petitioner was directed to obtain a certificate from some sworn Surveyor, or neighbours near the Chaudière Falls, that he and they could walk, in the dry season, from Lot No. 40 to the rocky chasms and not wet their feet; in which case the said rocky chasms would be considered part of the broken front of said Lot, and the fifty acres unlocated were to cover the rocky chasms and the intermediate space therein contained. But at the return of your Petitioner from this place in March, 1809, to Montreal, he fell a victim to the sharpest persecution, and was unrighteously imprisoned for debt, and in close confinement to the 13th of last month, which not only prevented your Petitioner from obtaining a certificate relative to the rocky chasms, which he could have done with much ease, but also from prosecuting his establishment at the Chaudière Falls, in the Grand River, which as well as the property which your Petitioner had sent on, to the amount of five hundred pounds, as a commencement in his business, entirely perished as soon as the late War was declared by the American Government against Great Britain.

Your Petitioner would have proceeded to his place at the Chaudière Falls for the purpose to obtain the relative certificate after obtaining his enlargement, but his debilitated state, and the fast approach of winter, made it requisite for your Petitioner to proceed to this place, from thence to Niagara, in order to look after his property in that part of the Province; and your Petitioner now conceives that he has the tacit approbation of those who were his adversaries, to proceed in making his establishment at the Chaudière Falls, on the Grand River, by their granting him his enlargement, and offering him their friendly assistance. He also flatters himself that his long and sharp sufferings are considered by those whom he viewed as enemies, to be an ample atonement for their unenvied and friendly return of feelings. And as your Excellency may be well informed of the great utility your Petitioner's establishment of the Bridge Water Works, near the Falls of Niagara, were to the prosperity and growth of that part of the Province, he hesitates not, to say his establishment at the Chaudière Falls, on the Grand River, will be of equal, if not of superior importance to that section of the Province. Your Petitioner can with truth say, that his Bridge Water establishment at Niagara, gave a spring to the agricultural and mercantile interest, not only throughout the District of Niagara, but the Province at large; for your Petitioner was the first person who manufactured Flour for exportation in the Province of Upper Canada. Previous to your Petitioner's establishment at Niagara, both farmers and merchants were so circumscribed, as to be of little service to each other. His mercantile establishment at Cornwall, in the Eastern District of this Province, is also known to have been a growing benefit to that place; and had envy not overtaken your Petitioner,

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our Petitioner,

he would have turned the trade and produce of the whole Eastern District to Cornwall, whereas it formerly entirely went to Montreal. The chasms which your Petitioner considers to be part of the broken front of Lot number forty, are not or cannot be of the least importance either to Government or individuals, except to accommodate your Petitioner in establishing himself in business at the Chaudière Falls. A young gentleman who is at this place unexpectedly, at this moment, says, he has himself stepped from Lot number forty to the chasms, in the dry season of the year, and did not wet his feet, that he thinks the chasms should be considered as part of the broken front of Lot number forty, and is willing to declare the same before Your Excellency; he is a young man of veracity, and his declaration is to be relied on, which your Petitioner trusts will be proof sufficient to satisfy Your Excellency of the propriety of his present request, and if it should be proof sufficient, your Petitioner most humbly solicits Your Excellency to order a deed to be issued in the name of your Petitioner, as follows:—

Beginning at a cedar tree or boundary mark near the edge of the bank at the side of the Grand River, in the line between Lots thirty-nine and forty, and to run to the upper extremity of the fourth chasm, according to the annexed draft of it, from thence to the extreme point or upper end of chasm number three at the Grand Fall, running with the margin of said chasm at the water's edge to the north side; thence down the stream to the lower end or extreme point of said chasm; thence to the extreme point or lower end of chasm number two; from thence in a straight line to a small oak tree or boundary mark, in the north end of the east side line of Lot number forty, at the water's edge of the Grand River; thence with the water's edge, following the several turnings and windings thereof, to the place of beginning, with all the intermediate space therein contained, containing fifty acres more or less.

And, as in duty bound, your Petitioner will ever pray.

R. RANDALL.

York, Upper Canada, November 2nd, 1815.

## No. 18.

Mr. Randall's Suit at Law to recover Damages relative to Niagara Falls Estate.

Hon. GEORGE S. BOULTON to Major RANDALL.

[From Journals of Assembly, U.C., 1836.]

BROCKVILLE, 7th September, 1816.

Dear Sir,—Your letter came to hand a day or two ago, but my father finds it totally impossible to attend the Assizes in the District of Niagara. In consequence, Mr. Jarvis has been written to on this subject, and I have no doubt he will pay due attention to it. In the mean time see Mr. Cameron and get him to prepare a brief for Mr. Jarvis. When Mr. Jarvis arrives you had better see him and give him two guineas as a retainer.

The business (if you think proper) Mr. Jarvis will try and put off until next year, when my father will attend. If that cannot be done, Mr. Jarvis, I am sure, will exert himself for you. In haste.

Yours truly,

G. S. BOULTON.

## No. 19.

### Lands in Nepean.

[From Journals of Assembly, U.C., 1836.]

PERTH, 14th December, 1816.

Sir,—Yours of the 25th November came to hand yesterday; I shall with pleasure attend to Mr. Randall's concern in the month of January, at which time I shall visit the lot in question, and ascertain the exact situation, and enclose you a sketch and certificate, and charge the same in account against you.

I have the honor to be, Sir,

Your most obedient Servant,

R. SHERWOOD,  
Deputy Surveyor.

G. S. BOULTON, York.

## No. 20.

### Niagara Falls Estate.—Boulton; Attorney.

[ROBERT RANDALL vs. ELIJAH PHELPS.]

The arbitrators in this cause refuse to go into the consideration of the subject in dispute between the above parties upon the following grounds:—That Mr. Bearsdley, the Counsel for the Defendant, requires the evidence of a supposed contract between his client and the Plaintiff, for the conveyance of the premises mentioned in the pleadings of this cause to Mr. McCulloch, which Mr. Boulton, Counsel for Mr. Randall, objects to, and because they cannot appoint an umpire who is unobjectionable to either party.

31st December, 1816.

H. J. BOULTON.

## No. 21.

### Mr. Barrows to Mr. Randall.

[From Journals of Assembly, U.C., 1836.]

LONG-ASH ESTATE, NEPEAN, April, 27th 1818.

Sir,—Having lately arrived from England and settled on the Grand River, in the Township of Nepean, and being informed that the Lot adjoining to mine, which is No. 40, belongs to you, I have taken the liberty of troubling you to know if you are disposed to part with it, and on what terms: waiting an answer,

I remain, Sir,

Your very obedient servant,

J. BARROWS.

Major RANDALL,  
Little York, or elsewhere, Canada.

## No. 22.

Randall's 1000 Acre Grant.—Mr. Lee to Mr. Randall.

[From Journals of Assembly, U.C., 1836.]

Dear Sir,—The date of the order in Council to locate 50 acres, to complete your grant of 1000, is 5th September, 1818.

Yours,

R. RANDALL, Esquire.

WILLIAM H. LEE.

## No. 23.

Mr. Downes to Mr. Randall.

[From Journals of Assembly. U.C., 1836.]

UPPER CANADA, Township of Longueuil, 7th February, 1819.

Mr. Randall: Sir,—I did myself the pleasure of writing to you last fall about your situation on the Grand Chaudière Falls, to which I have not had the pleasure of an answer; when I had the pleasure of seeing you, you spoke as if you intended to make speedy preparations to form a settlement and commence business, and expected you would have commenced previous to this,—hope your lawsuit you had depending, has terminated in your favor,—should be glad to learn if you have been successful, as I apprehend your attendance to that has prevented the visit you intended to make last fall,—I would be under obligation to you to inform me as quick as possible, if you would dispose of any part of your land above mentioned. If you are inclined, I would beg leave to offer to purchase a small portion, say an acre or two, immediately on the Point, leaving you the exclusive privilege of water. If you feel disposed, would thank you to inform me, with your conditions, hoping we may come to an understanding; I am in business now, where I have directed my letter from, but the situation does not suit me so well for business as one above. I have taken a large concern at the foot of the Long Sault Rapids, in the Grand River, which will be a place of considerable trade, and should like a situation on the Chaudière, in order to establish a communication with the Upper Country; if it is your intention to comply, please write me speedily, that I may not lose any time to erect a Store for the purpose of carrying on business next season, and would be glad you would give me the privilege so to do; if you have any commands relative to that place, you would wish to have executed, shall be happy to forward your designs by empowering me to act for you; should feel much obliged by your speedy information pro or con. As I wrote before on the subject, am fearful my letter miscarried, as I expected an answer.

I am, Sir,

Your very humble Servant,

SAMUEL DOWNES.

## No. 24.

Capt. John LeBreton to Mr. Randall—Desiring to purchase part of Lot No. 40, Nepean.

[From Journals of Assembly, U.C., 1836.]

NEPEAN, 8th May, 1819.

Sir,—I had the honor of addressing you last Autumn, but not knowing your address correctly, I am doubtful of your having received it. The purport of that letter, as well as the present, was to know if you would dispose of a part of your Lot of land on the Falls of the Chaudière, as I should be glad to have one or two acres, either by sale or lease. I have not the honor of being known to you personally, but having served in the late war in various parts of Canada, and particularly in the part of the country where you at present reside, and although my military occupation prevented my having much communication with the gentlemen of your neighbourhood, I believe you will obtain information of me from Mr. Samuel Street, though but little acquainted with that gentleman. I was at that time Deputy Assistant Quartermaster General, and at present have retired on Captain's half-pay of the 60th Regiment, and having drawn some lands in this country, have taken up my residence at the Rapids des Chenes, five miles from your Lot, and as the whole of that distance is land carriage, I find a great inconvenience for want of a place to store my goods at the landing, and am now obliged to build a small store of round logs on your property, which, if not agreeable to you, I will immediately remove, but if you will either sell or lease one or two acres at the lower point, next to the Island, in the Bay, I shall be glad to know your terms by the earliest opportunity.

There is a person here by the name of *Barrows*, who pretends to be agent for that property, *alias Honey*, but as I could not believe that he was entrusted with any property, I have not applied to him. If you have no agent here, and that I can be in any way serviceable in that line, though not with the view of pecuniary motives, but merely for the advancement and settling of the country, I beg you will command me; I shall at all times feel happy to communicate with you on the subject. Should your business at any time lead you to York, please mention my name to Judge Campbell, with whom I have had the honor of being acquainted some years past.

I have the honor to be, Sir,

Your most obedient humble servant,

JNO. LEBRETON.

ROBERT RANDALL, Esquire, Chippawa.

## No. 25.

Mr. Randall to Hon. H. J. Boulton.—The Attorney threatens the Client with a Suit at Law.

[From Journals of Assembly, U.C., 1836.]

CHIPPAWA, May 17th, 1819.

(Copy.)

HENRY J. BOULTON, Esquire,

Sir,—Time, Mr. Boulton, will disclose all things. If your knowledge of the Cabinet secrets of my business is such, as to cause you to have recourse to the measure you wish me to adopt in your letter that has been just now handed to me,

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by young Mr. Smith—I cannot perceive that your security need be better,—or that mine will be made much worse by not adopting the measure.

Probably, Mr. Boulton, I might be more alarmed at the situation of my business, had I the secret knowledge of its true situation that you may have. But if my want of that knowledge leaves me not alarmed, my ignorance must be my comforter, until time unveils to me the result of my business. You will greatly oblige me by sending to me, as early as you can, a copy of the Note which Clark sues on, as well a copy of the writings that you got from Montreal, relating to the business.

I am, Sir,

With respect, your humble servant,

R. RANDALL.

HENRY JOHN BOULTON, Esquire, Attorney at Law,  
York, Upper Canada.

### No. 26.

Hon. H. J. Boulton to Mr. Randall.—The Attorney asking new security from his Client.

[From Appendix to U.C. Assembly's Journals.]

To ROBERT RANDALL, Chippawa.

"York, 24th May, 1819.

"Sir,—I received your most extraordinary letter of the 17th instant, by Mr. Smith, which, if there is any meaning at all to be given it, is a very impertinent one, and such an one as I will not permit you nor any other client to write to me with impunity. I would have you to understand, that I am not rendering you any professional assistance, from what you may fancy popular reasons: and therefore, any further than my duty to my client prompts me I do not care a farthing about you. You gave me what I expected at the time to be a security for £100, half for my own benefit and half for my father's. This security, I find not worth half a dollar per acre, as there are no inhabitants in the Township. In addition to which I have your note for £25, due on the first of this month, both which sums, with interest, amount to nearly £140. And the security I have, independent of your personal responsibility, is not sufficient to guarantee the payment of half that sum; and as I am not looking at the result of your business, as you call it, for my payment, I insist upon having the money long due to me for services already performed, paid or secured in a sufficient manner. Were you unable to do either, I should not perhaps expect or wish it, but in proportion as you oppose giving me what I have a right to, so in proportion shall I insist on it, as you can have no honorable or just reason for withholding it. If you will pay me down £50, so as to lessen the burthen upon the land, I will accept it, and let the remainder stand as it does. I return the cognovit for your signature, and patiently wait the return of the post. Mr. Jarvis I fancy will hand you this, who will give you a receipt for any money you may pay him. You may be certain I shall not retract one farthing.

"Your obedient Servant,

(Signed,)

"H. J. BOULTON."

## No. 27.

Mr. Randall to Judge Boulton.—The Attorney prosecuting his Client.

[From Appendix to U.C. Assembly's Journals.]

CHIPPAWA, June 29, 1819.

Sir,—My motive in writing this letter to you, is not intended to palliate the high tone of your son Henry's procedure against me, for fees, including the sum of fifty pounds allowed for your management in the early state of my cause with Phelps, to amount of £125 currency, and the interest which he adds making the sum of £141 16s. 3d., currency—but purely for the respect I feel for you.

Your son Henry, is not satisfied with the Bond and Mortgage given him, dated 17th March, 1817, (for your and his fees in my suit against Phelps) for £100 currency, on a Lot of land in the township of Nepean, District of Johnstown. He is not satisfied with my Note of hand given him for Twenty-five pounds currency, at Niagara, on the 7th October, 1818, for his fee, which he insisted I should do, previous to his calling my cause against Phelps for trial at the then Assize, which cause, you, as presiding Judge, would not hear, from motives of delicacy, and ordered the cause to lay over as a Remanet of the Court for a future trial;—but he writes to me a letter, which I received on the 17th May last, wherein he says, "I have sent to my Clerk, Mr. William Smith, a Cognovit for the amount of £141 16s. 3d., currency, to be enabled, if so inclined, to take out an execution against you;" I refusing so to do.

He again writes to me, handed by Mr. Jarvis, 23rd instant, wherein he says, I am very impertinent (I suppose for not having signed the Cognovit); he also says the security I gave him is not worth half-a-dollar per acre, as there are no inhabitants in the Township. And Mr. Jarvis handed me a summons from Mr. Henry John Boulton, to appear on the first day of Trinity Term next, at York. Whether the land is worth half-a-dollar per acre or twenty dollars, it is not my motive at this present to make any comment. If the extreme scarcity of money does not preclude the interposition of my friends, I hope the land will not fall into his hands. It was through your instance that Mr. Henry Boulton became employed by me to manage my suit against Phelps. At the time he accepted the management of the cause, he was knowing that I was moneyless, and promised to wait for his fees until the termination of the cause: however, a few months after he made up an account of £50, currency against me, and required security for the same, upwards of six months too previous to his arguing the cause. I offered him security on land in Matilda, a Township thickly settled; his choice was Nepean; he knew the land in both Townships to be good. When you advised me to employ your son, I expected his assistance in recovering my property from the hands of a set of scoundrels; little did I expect that he would require of me a judgment bond for fees previous to the decision of the cause, or that I was to be ruined by the man employed to assist me. The steps of your son are so novel in the law practice of this Province, I consider it my duty, from the friendly understanding that has subsisted between you and me, to lay the business before you—not Sir, that I wish you to palliate the high tone and tenor of your son's speculative intentions. I may or shall endeavor to meet his wrath at every point, and neither of us may be the winner.

I am Sir, with respect,

Your humble Servant,

R. RANDALL.

Hon. Justice BOULTON, York, Upper Canada.

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## No. 28.

Hon. H. J. Boulton to Mr. Randall.—Relative to the cause about to be tried.

[From Appendix to U.C. Assembly's Journals.]

"To ROBERT RANDALL, Chippawa.

"YORK, 8th July, 1819.

"From what has occurred I suppose you do not wish me to advocate your two causes at the next Assizes; if that is the case, I should wish to know it immediately, as it will save me some trouble. Indeed I am not very anxious to be the advocate of a person who is so very illiberal in his sentiments, because I should expect (from the specimen in your former letter) that, should all my efforts prove of no avail, you would accuse me of not sufficiently exerting myself, and allowing the other side, from improper motives, to obtain undue advantages.

"At all events, in order that I may not subject myself in future to the like treatment and similar observations, I shall expect the fee with my brief to be advanced, which will preclude all misunderstandings.

"If possible to be procured, you should have the original note upon which the judgment in Mr. Clark's suit was obtained. You had better write to some of your friends, in Montreal, to apply to the Officer of the Court for it who, perhaps, will give it up.

"Your obedient Servant,

(Signed,)

"H. J. BOULTON."

## No. 29.

Andrew Berrie to Mr. Randall.—A Tenant on Lot 40, Nepean.

[From Appendix to Assembly's Journals, 1836.]

POINT NEPEAN, 8th January, 1820.

Honored Sir,—Having wrote you on the 27th of October last, and not receiving an answer, I again take the liberty of troubling you on the same head.

Having been here ever since July last, and had every opportunity of seeing the necessity of a house of accommodation, I took the liberty of erecting one (as a tavern,) near the old house built by Mr. Torry.

It being the opinion of every one here, that nothing can be done on the Point in regard of cultivation, I mean, with your full approbation, to make a trial, by laying out a garden, having been gardener seven years in this country, during my service in the Royal Artillery, being employed chiefly by Generals Brock and Glasgow.

From what I have heard from several persons who have the honor of being acquainted with your character, I have every reason to hope for a favorable answer, or should not have gone thus far without hearing from you. I hope therefore, Sir, you will not think it too much trouble to send me an answer the first opportunity.

As to my character, I can no doubt fully satisfy you on that point; in compliance with the above, you will much oblige,

Sir, your humble servant,

ANDREW BERRIE.

## No. 30.

## Mr. Randall's Affidavit relative to Secret Judgment obtained by Boulton.

[From Appendix to Assembly's Journals, 1836.]

Trinity Term, 2nd Geo. IV.

IN THE KING'S BENCH,  
DISTRICT OF NIAGARA, TO WIT.  
Henry John Boulton,

vs.

Robert Randall.

with Mr. Morris, of the County of Carleton, was informed that his land in the Township of Nepean, in the Johnstown District, was sold by the Sheriff of the said District, under and by virtue of a Writ of *fieri facias* in the above suit, and this Deponent further saith, that not until then did he know that the said Henry John Boulton had obtained a Judgment against him, and this Deponent further saith, that pecuniary embarrassments prevented this Deponent from applying before to set aside the said proceedings, which the Deponent could never expect to have been carried to such lengths from promises held out by the said Plaintiff, namely, that the bond was only taken, upon which part of this action is brought, as a security for his, the said Henry John Boulton's fees, and his father's, now the Honorable Justice Boulton.

(Signed,) ROBERT RANDALL.

Sworn before me, this 10th day of July, 1821.

(Signed,) J. MUIRHEAD,

Commissioner for taking affidavits in K.B.,  
in and for the District of Niagara.

## No. 31.

Mr. Stewart, Barrister at Law, to W. L. Mackenzie.—Statement of the Proceedings he took on Randall's behalf in 1821, to set aside Boulton's Judgment.

[NOTE.—The moment that Randall ascertained that Boulton had thus secretly sold his estate, he employed Alexander Stewart, Esquire, Barrister, then of Niagara, now of Brantford, to obtain a reversal of the proceedings upon proper affidavits. Mr. Stewart's letter to W. L. Mackenzie, dated Brantford, 2nd August, 1852, thus details the proceedings, so far as he (Mr. Stewart) was concerned in the suit.]

"I shall now endeavour to give you all the information that I can upon the motion which I made to set aside interlocutory judgment in the case of Boulton, *vs.* Randall: I think it was in Trinity Term, 1822, [it was November 7th, 1821,] the Statute at that time regulating the proceeding in the King's Bench, which was by summons and declaration, both being in one. The Statute required that the Defendant should be personally served with a copy, and afterwards with a demand of plea. The service of the demand of plea was not required to be personal, but leaving the same at the Defendant's place of abode would be sufficient. Major Randall was then living at Chippawa, and the Plaintiff had laid his venue in the Home District (Toronto). The Court of King's Bench had made a rule that

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[Lord Dalhousie]

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"where the Defendant resided in a different district than where the venue was laid,  
"Plaintiff might stick the demand of plea up in the Crown Office (at Toronto)  
"with an affidavit that the Defendant's place of residence in the Home District  
"was unknown to the Deponent. I made objection to the Court having any such  
"power to make any rule of the kind. I contended that it was contravening the  
"Statute; that by a common sense view of the same, it was clear that it was in-  
"tended that the demand of plea should be at least left at the Defendant's place of  
"abode. I contended also, that the Statute giving the Court power to make rules,  
"was only to regulate the practice where the Statute had omitted to do so, but  
"here was no such omission, the Act required the Defendant to be served eight  
"days before interlocutory judgment could be signed; but it was all in vain, the  
"Court ruled themselves the power; I took nothing by my motion. Boulton  
"brought debt on his mortgage, and included a £25 note which he extorted out of  
"the poor Major, and as an interlocutory judgment in debt is a final judgment, he  
"immediately issued execution, and a more \* \* \* \* \* proceeding never disgraced  
"the administration of justice in any country. You only do me justice when you  
"say I was a friend of the Major; he was the intimate friend of my father, and I  
"shall be happy at all times to give you any information that I can, and I feel sa-  
"tisfied that if ever the decision of that day could be brought before the Court of  
"Appeals, that the whole would be upset."

## No. 32.

The Earl of Dalhousie's opinion of the sale of Randall's Lot 40, to  
Sherwood and LeBreton.

[Lord Dalhousie's reply, and declaring his belief that Sherwood and LeBreton's purchase of Lot 40,  
was not lawful.]

I should not object to lease a Small Lot on the Clergy Reserve adjoining the  
Richmond Landing to the Petitioner Barry, but I am more than ever convinced  
that the purchase of Captain LeBreton is an illegal purchase of the Landing Lot,  
and I therefore advise Barry to avoid removal while he can, the more so as Govern-  
ment has in my opinion a strong claim upon it for Public Service.

QUEBEC, 10th December, 1822.

(Signed,)

D.

A true Copy.

JOHN PARKER.

## No. 33.

[Appendix to Assembly's Journals, 1836.]

Lot No. 40, in the first concession of the Township of Nepean, with its broken  
front, was sold by Sheriff's sale, on the eleventh day of December, 1820, at the suit  
of Henry John Boulton, Esq., and purchased by John LeBreton, Esq., for the  
sum of £449 currency.

A. M'MILLAN,  
Deputy Register.

The Lots Nos. 38 and 40 on the Ottawa, and No. 10 on the River Rideau, were all sold by the Sheriff's order in the Court House, Brockville, and purchased by L. P. Sherwood, Esq.

R. SHERWOOD.

### PLAN.

Please call on Captain Collins, near the mouth of the Jock, on the Rideau, and he will shew Major Randall the front of Lot Nos. 10 and 11 drawn by him.

Major PATTON,

Register Office, Prescott.

R. S.

### No. 34.

The Governor General's Reply to Mr. Randall's Petition for Justice, in the matter of Lot 40, Nepean.

[Appendix to Assembly's Journals, 1836.]

CASTLE OF ST. LEWIS, QUEBEC, 21st February, 1823.

Sir,—His Excellency the Governor in Chief (The Earl of Dalhousie) commands me to acquaint you, in answer to your letter of 20th instant, that he has had under his most serious consideration your memorial of last summer, setting forth various grievances and acts of injustice to you in your civil rights, on the part of different persons connected with the administration of the law in the Upper Province, and His Excellency directs me to add that as he does not possess the authority either to investigate or redress your alleged grievances, he can only refer you to the Governor of that Province who will, no doubt, pay all proper attention to your representation.

I have the honor to be, Sir,

Your most obedient servant,

A. W. COCHRAN,

Secretary.

R. RANDALL, Esq.,

York, Upper Canada.

(Copy.)

Governor in Chief the Earl of Dalhousie's Decision on A. Berrie's Petition for an acre of the Clergy Reserve, Lot 39, Nepean, Ottawa Front.

"I should not object to lease a small Lot on the Clergy Reserve (meaning No. 39) adjoining the Richmond Landing, to the Petitioner Berry, but I am more than ever convinced that the purchase of Captain LeBreton is an illegal purchase of the Landing Lot [meaning Lot No. 40, granted to R. Randall], and therefore advise Berry to avoid removal [from Lot 40] while he can—the more so as Government has, in my opinion, a strong claim upon it, for public service.

(Signed),

"DALHOUSIE."

"Quebec, 10th Dec., 1822."

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"A True Copy.—This was the last decision given by His Lordship on this case.

"(Signed,) JOHN PARKER,  
"Capt. & D.A.Q.M.G.

"2nd Oct., 1823."

### No. 35.

Capt. Dickson authorizes Mrs. Firth to keep possession of Gov. House on Lot 40, Nepean.

DY. QUARTER MASTER GENERAL'S OFFICE,  
Quebec, October 10, 1823.

This is to Certify that Mary Firth, residing on the Broken Front of Lot No. 40, in the 1st Concession of the Ottawa Front, Township of Nepean, is authorized to keep possession of the keys of the Government Store thereon; and any demand made by persons for rent, &c., to be made on His Majesty's Government.

By His Lordship's Command,

WM. R. DICKSON,  
Capt. & Dy. A.Q.M.G.

ENDORSED.—Dy. Quarter M. General's Office, Quebec, 14th October, 1823. On H.M. Service, To Mr. Andrew Berry, late of the R. Artillery, Richmond Landing, Ottawa River. Post Paid. Wm. R. Dickson, Captain & Dy. Asst. Qr. Mr. Genl.

### No. 36.

Mr. Randall to Lieut. Col. Dickson.—Wishes the Earl of Dalhousie not to employ Judge Jones to defend his (Randall's) Title to Lot 40 Nepean—or to associate the Hon. John Rolph with him.

[From U. C. House of Assembly's Journals (Appendix), 1836.]

(Copy.)

YORK, 31st December, 1823.

Sir,—An application has been made to me by Mr. Jonas Jones, Barrister at Law, to furnish him with instructions to defend an action of ejectment brought by Mr. L. Sherwood and Captain LeBreton, for the purpose of getting possession of lands and tenements which belong to me, and which are at present in the actual possession of Messrs. Berrie and Firth, &c.

As Colonel Burke, the gentleman who employs Mr. Jones, could not have been fully aware of the whole of the circumstances at the time he employed him, I beg leave to state to you, Sir, for His Excellency the Commander of the Forces information, that Mr. Jones is not only brother-in-law to Mr. Sherwood, but also a brother-in-law to Mr. Boulton, the person who, upon an *ex parte* proceeding, obtained judgment against me, issued execution, and sold this property for the sum of one hundred and twenty-five pounds, for fees accruing to him in his prosecuting a suit for me in the sum of ten thousand pounds, currency, wherein I

had obtained two verdicts for the aforesaid sum, which Mr. Boulton abandoned, and my suit thrown out of Court. His Excellency the Commander in Chief is in possession of the case in detail.

I also beg leave to communicate for the information of His Excellency, that I have employed Mr. John Rolph, Barrister at Law, to commence a process against Mr. Boulton, in order to set aside the Judgment obtained against me, and for which this property has been sold at Sheriff's sale, and as he is in possession of the whole proceedings and documents in the case, and being of the first respectability, and not long since from the Temple in London, and no way connected with the above gentleman, I humbly beg leave to suggest the propriety of associating Mr. Rolph with Mr. Jones, in defending Messrs. Berrie and Firth against the suits of ejectments, not that I have any reason to suppose that Mr. Jones would in any wise be influenced by his connection with Messrs. Sherwood and Boulton, only that human nature is generally more or less influenced by family connection, which induces me to beg leave to recommend to His Excellency, that Mr. Rolph be associated with Mr. Jones in the defence of the said suits of ejectments, and if His Excellency should think proper so to do, that he will please to order that Mr. Rolph have the earliest notice thereof, directed to him at Dundas, in the District of Gore, Upper Canada.

I have the honor to be, Sir,

Your most obedient and very humble Servant,

ROBERT RANDALL.

Lieutenant Colonel DICKSON,  
Deputy Quarter Master General,  
Quebec.

## No. 37.

### Lord Dalhousie's Decision.

[From U. C. House of Assembly's Journals, (Appendix), 1836.]

DEPUTY QUARTER MASTER GENERAL'S OFFICE,  
Quebec, 24th January, 1824.

Sir,—I have the honor to acknowledge the receipt of your letter of the 31st ultimo, which having submitted to the Commander of the Forces, I have received His Lordship's Commands to thank you for the suggestion therein contained, but, at the same time to acquaint you, that His Lordship does not deem it necessary to employ further Counsel in the question.

I have the honor to be, Sir,

Your very obedient humble Servant,

WILL. R. DICKSON,  
Capt. and Dep. Qr. Mr. General.

R. RANDALL, Esquire, M.P.P., York.

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## No. 38.

Randall's Affidavit as to value of his Lot, 40, Nepean,—that is, of a part of the Lot,—1823.

[Copy of Affidavit by R. Randall, in the handwriting of the Hon. John Rolph.]

"In the King's Bench.—Henry John Boulton *vs.* Robert Randall.—Robert Randall, of the Township of Stamford, in the Niagara District, Esquire, the above Defendant, maketh oath and saith, that the landed property of this Deponent sold under the execution issued in this suit, (as this Deponent was informed by Mr. Morris, Member for the County of Carleton), was not the Lot of Land mortgaged to the said Henry John Boulton, who was present at the sale, as mentioned in the condition of the bond on which the said action was in part brought, but certain other lands of this Deponent's, of very great value, and for a part of which this Deponent was offered £3000 lawful money of Upper Canada, being the Landing Place, adjacent to the proposed site for the military and civil establishments of His Majesty's North American possessions."

## No. 39.

Mr. Rolph endeavours to set aside the judgment obtained by Hon. H. J. Boulton against R. Randall.—Proceedings in the Court of King's Bench.

[From Campbell's Manuscript Reports.]

EASTER TERM, 5th Geo. IV., April 30th, 1824.

[Boulton *vs.* Randall.]

This Court fully recognizes the Rule of Hilary Term, 3rd James I., which orders that no cause once argued and determined, shall again be brought before the Court.

In this case, *Rolph* applied for a Rule to shew cause why the proceedings and judgment should not be set aside for irregularity; and why the writ of *fiery facias*, issued upon the said judgment, against the lands and tenements of the Defendant, should not be superseded, with costs, and restitution made to the Defendants.

A judgment by default had been signed in this case, and execution issued, and the lands sold under it, several years ago; and an application, similar to the present, had been made by Stewart of Counsel for the Defendant, who, in Michaelmas Term, 1821, had obtained a Rule *Nisi*, but which, upon argument, had been discharged.

Various irregularities were, upon the present application, pointed out by Mr. Rolph, some of which had probably not been insisted upon by Mr. Stewart in the former motion.

The Counsel now went considerably at length into the supposed irregularities, and also read an affidavit (which was filed) containing a statement of those irregularities, and of the facts and merits of the Applicant's case,—adverting also to the partial want of consideration of the debt upon which the judgment was obtained. He also cited many cases of new trials at law and re-hearings in equity, which he considered analogous.

ROBINSON, Attorney General, *contra*—read an affidavit rebutting those facts and

circumstances, but relied upon the universal practice of Courts of Law (to which no exception could be found) which does not permit a cause once determined, upon motion and argument, to be again brought forward, either upon the ground of the same or other irregularities, not before insisted upon. He cited and read the Rule of Hilary Term, 3rd James I., by which it is ordered, "That if any cause shall first be moved in Court, in the presence of the Counsel of both parties, and the Court shall thereupon order between those parties, if the same cause shall again be moved, contrary to that Rule given by the Court, then attachment shall go against him who shall procure that motion to be made contrary to the Rule of Court so first made; and that the Counsel who so moves, having notice of the said former Rule, shall not be heard here in Court in any cause in that Term, in which that cause shall be so moved, contrary to the Rule of Court in form aforesaid." The Counsel also cited authorities, to show that no motion can be made upon the ground of irregularities, not noticed upon a first motion.

CAMPBELL, JUSTICE.—Upon the opening of this matter, I thought it strange, and was indignant that the irregularities pointed out by the Defendant's Counsel should have taken place. Whatever were the grounds, it now appears that those irregularities have been discussed and decided upon for many Terms back. The Counsel has referred to a number of authorities which it was to be supposed he referred to, as upon a first application and discussion, but it appears that was not the case. If they are to be considered as furnishing authority for opening and re-considering matters already decided upon, they do not apply.

Upon reference to the order in Hilary Term, 3rd James 1st, it appears such second discussions cannot be permitted. Were it not for this salutary rule, nothing could be more uncertain than the proceedings and decisions of Courts of Justice. There is also a penalty attached to the breach of the rule, which, as this is the first time it has been attempted to be infringed in this Court, I should not wish to see enforced; but upon any future attempt of the kind I should.

CHIEF JUSTICE (Powell).—I concur with my brother Campbell, and for the reason given by him, I also consider that the penalty may be dispensed with.

*Per Curiam*—Application refused.

## No. 40.

[From Manuscript Reports.]

In the King's Bench.—Boulton vs. Randall, 1824.

TRINITY TERM, 5th Geo. IV.

The proper style of this Court is "before His Majesty's Justices," not before the King himself, "*coram vobis*," not "*coram nobis*."

WASHBURN moved for an allowance of a Writ of error, *coram nobis*.

BOULTON, (Solicitor General)—objected that the writ should be *coram vobis*,—that all writs here should be returnable before His Majesty's Justices. In England the Court of King's Bench is ambulatory, following the person of the King, but here it is stationary. In England, the Parliament may sit in Westminster, and the Court of King's Bench where the King himself is, but in this Country the Court must sit where the Parliament sits.

The ATTORNEY GENERAL, (Robinson,) observed, that if the writ was defective it might be quashed in this Court, or in Chancery. To this observation the Chief Justice (Powell) assented, observing (with the Court), that the style of the Court

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hitherto adopted in writs, was improper, but that they would not interfere with a practice which had obtained for such a length of time.

*Per Curiam*—Writ allowed.

## No. 41.

Mr. Washburn to Mr. Randall, on setting aside the Boulton judgment.

[From Journals of Assembly, U.C., 1836.—Appendix.]

YORK, 23rd June, 1824.

Dear Sir,—I hasten to inform you, that yesterday morning, as soon as decency would permit, I addressed a note to Major Hillier, on the subject of the Writ of Error, stating Mr. Cameron's refusal to seal it. In the evening, I had the honor of receiving a note from the Major, a copy of which I enclose for your perusal. You will see, therefore, that thus far we go swimmingly, however we may succeed hereafter. I have been favoured with a letter from Mr. Rolph, stating that it will be impossible for him to attend here sooner than the latter end of the Term. I am sorry for it, as I wanted his assistance much; but, however, as I am fairly in for it, I must of course pursue it. Whatever lies within the compass of my small abilities, (and very small they are, I know,) you may rest assured will be done for you. But as there is no one thing under heaven more uncertain than the certainty of the law, I would not have you too sanguine. You know whom you have to contend with. Term begins on Monday, 5th July.

Faithfully yours,

S. WASHBURN.

ROBERT RANDALL, Esquire, Stamford.

(Copy.)

"Major Hillier has the honor to acquaint Mr. Washburn, that the necessary instructions have been given to the Provincial Secretary, to affix the Great Seal to the Writ of Error required by him."

"Government House,

"York, 22nd June, 1824."

## No. 42.

Mr. Randall's Title to the Niagara Falls Estate.

[Copied from Fr. Collins's Stenographic Report of the Trial of R. RANDALL, at Niagara, Sept. 7, 1825.]

EVIDENCE OF THE HON. THOMAS CLARK.

"Witness held a Patent from the Crown for the Bridgewater Works. (The Patent was produced.) It was dated 2nd January, 1816—it included the whole item sworn to by Mr. Randall, and 10½ acres more.

"Cross-Examined by Mr. Rolph.—Witness visited Mr. Randall while in gaol in Lower Canada—saw him in Montreal Gaol—asked him to transfer to him (wit-

"ness) his Mr. Randall's) interest in the Bridgewater Works. Mr. Randall had a claim on one-third of the Bridgewater Works, under a lease for 999 years, from General Simcoe. Witness visited Mr. Randall in Montreal Gaol for other purposes also."

[Extract from Honorable JOHN ROLPH's Address to the Jury during said Trial]:—

"Randall has tasted the bitterness of protracted imprisonment in a Foreign Gaol, and it is now proposed to make him suffer martyrdom in life pillory! For seven years he was immured in a dungeon in Lower Canada, where he suffered privations, the detail of which would make humanity shudder. Engaged as you are in the active and diversified pursuits of life, there is much to occupy your attention, and divert it from a thousand vexations which are attendant on the fate of the most fortunate of men; and even when business has lost its interest, or brought fatigue, nature opens her exhaustless stores, to invigorate the body, to delight the senses, and to regale the mind; but in a gaol, there is nothing to fill up a tedious existence—it is there almost worldless as the grave—no important trifles to incite desire—no prospects of success to animate with hope! Randall's care-worn soul, vacant of employment, and harrowed up by thought, was there left to turn upon itself for years, to witness its own forlorn wretchedness, to mourn the prospect it had lost, and brood over the miseries to come. It was thought that the poverty and wretchedness brought upon him, would break down the spirit of the man; that nature, however buoyant, could not bear up against such complicated woes. Many, many a man, thus made a prey to accumulated sorrow, is doomed to hang the head of despondency, and when ushered into prison, every remnant of former vigour, that might promise a successful struggle, is soon exhausted by despair. But Randall survived the wreck of his property, and the miseries of a prison."

[Remarks by the Petitioner.—Colonel Clark admits on oath that, although he kept Randall in prison, and sold valuable estates of his for a mere nominal price, through the Sheriff, Randall had a claim on the Falls Estate, withheld from him by Clark. Mr. Chief Justice Macaulay, when Boulton's student had been directed to swear that he (Macaulay) did not know where Randall lived in the Home District, where Boulton knew he had never lived, and that his home was a hundred miles distant, at Chippawa. Through this oath Randall was prevented from knowing that Boulton had proposed to make a demand of plea from him, which was no demand, for a scrap of paper stuck by Boulton in an Office at Toronto, was no demand from Randall, who resided a hundred miles off. Under this pretended notice, however, Boulton secretly sold one of Randall's most invaluable estates, on a claim of about £142, which he got, and Sheriff Stuart (his brother-in-law) probably kept the remainder, about £300. His heirs or assigns, under 7 Will. IV, c. 3 sec. 3, can plead the Statute of limitations; Randall got not a penny. Soon after, Mr. Macaulay, acting for the Crown under Boulton's directions, vainly tried to convict Randall for perjury, because he had sworn that lands thus gambled or juggled from him were still his.]

### No. 43.

Colonel By to Mrs. Firth, relative to part of Lot 40, Nepean.

MONTREAL, 4th January, 1827.

Dear Madam,—I have the pleasure to inform you, that His Lordship the Commander of the Forces has kindly complied with your request to build a good house

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To Mrs. Firth

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near the one you now occupy; I, therefore, hope to find you and Mr. Firth very busy at my next visit.

Believe me, dear Madam,

Yours faithfully,

JOHN BY.

To Mrs. FIRTH, at Point Nepean.

ENDORSED.—To Mrs. Firth, Point Nepean, near Hull, Upper Canada, Ottawa River.

## No. 44.

Mr. Sheriff Sherwood to Mr. Randall.

BROCKVILLE, 6th April, 1827.

Sir,—At the desire of Mr. Charles Lemoine, I have enclosed you the within. Should you incline to sell, please write me your terms.

I am, Sir,

Your obedient servant,

ADIEL SHERWOOD.

ROBERT RANDALL, Esquire.

[For Mr. Charles Lemoine, of Augusta, Blacksmith.]

To write to Robert Randall, Esquire, M.P.P., Chippawa, above Niagara, stating that he (Lemoine) wants to purchase Lot No. 11, on the Rideau, 1st Concession of Nepean; also state that R. Sherwood bid the same off at auction some years since, but the Sheriff refuses to give a title, and, therefore, this Lot must be considered Mr. Randall's property as yet.

24th March, 1827.

R. SHERWOOD.

A. Sherwood, as agent, may send this if he chooses.

R. S.

## No. 45.

[Journals of Assembly, Appendix, 1836.]

To the Honorable the Commons House of Assembly of Upper Canada, in Provincial Parliament assembled:

The Petition of Robert Randall, of Stamford, in the County of Lincoln, Esquire, HUMBLY SHEWETH:

That in the year of our Lord, one thousand eight hundred and sixteen or thereabouts, your Petitioner employed the present Mr. Justice Boulton, then Attorney General, as his legal adviser, in all his affairs relative to the disputed property between the Petitioner and Messrs. Clark and Street. That Mr. Justice Boulton continued such his legal adviser and Attorney until his elevation to the bench,

when he handed over the Petitioner's business and papers to his son, the present Solicitor General. That upon Mr. Justice Boulton's so giving up the business of the Petitioner to Henry John Boulton, Esquire, the latter required of the Petitioner a collateral security for the sum of fifty pounds, then due to his father, for his professional services, as also for fifty pounds, which were to accrue to himself. That your Petitioner accordingly on the seventeenth day of March, in the year of our Lord, one thousand eight hundred and seventeen, executed and delivered to the said Henry John Boulton, a mortgage on Lot No. eleven in the first Concession on the Rideau, in the Township of Nepean, in the District of Johnstown, containing two hundred acres, for one hundred pounds, payable with interest on the first day of January, in the year of our Lord one thousand eight hundred and nineteen, and on the seventh day of July, in the year of our Lord, one thousand eight hundred and eighteen, your Petitioner executed and delivered to the said Henry John Boulton, a bond in a penalty of two hundred pounds, with a condition reciting the said mortgage, and to pay to the said Henry John Boulton the sum of one hundred pounds as mentioned in the said mortgage. That the above described lot is a most valuable one, your Petitioner having many years ago been offered two pounds an acre for it, and another Lot in the said Township having been subsequently sold at Sheriff's sale, at Mr. Boulton's suit, for ready money, for four hundred and fifty pounds, or thereabouts, as your Petitioner has been informed and believes.

That subsequently, and after the execution and delivery of the bond and mortgage, the said Henry John Boulton proceeded in the business of your Petitioner, and obtained against one Elijah Phelps, a verdict for a large sum—which having been set aside, and a new trial granted, the cause again came on for trial, at the Niagara Assizes, for the year one thousand eight hundred and eighteen, where Mr. Justice Boulton presided, and where your Petitioner attended, with a great number of witnesses to go to trial. That the said Henry Boulton also attended as Counsel for your Petitioner, but who refused in the first instance going on with the trial, until the Petitioner had given him his note for twenty-five pounds, payable on the first day of May A.D. 1819; but which note was not given without a strong remonstrance from your Petitioner, as he considered he had already given him ample funds of security. That after giving the said note, Henry John Boulton promised to go on with the case immediately, when your Petitioner went in search of his witnesses; but on his return was not a little astonished to find, that the cause had been ordered to lie over to the next Assizes, in consequence of the Judge declining from motives of delicacy to try it. That your Petitioner strongly remonstrated against such a decision, both with his Counsel and his father the Judge, who admitted to the Petitioner that before he accepted the Circuit in which Niagara is, he knew this trial would come on, and had determined not to try it, as he had formerly been concerned in it. That the said Henry John Boulton must have been aware that this cause would not be tried; but had allowed your Petitioner to go to a considerable expense in gathering his witnesses; had obtained his note for twenty-five pounds, and then abandoned him, and has never since done any business for him.

That afterwards and immediately after the said note became due, your Petitioner was sued thereon, and upon the aforesaid bond by the said Henry John Boulton—he having got out his writ directed to the Sheriff of Niagara, on the twenty-first day of May, A.D. 1819—and the note being only due on the first day of that month. That on the twenty-fourth day of June, 1819, your Petitioner was served at his residence at Stamford, in the Niagara District, with the declaration and summons, at the suit of the said Henry John Boulton, returnable on the first of Trinity Term then next, and from that day, until about eighteen months afterwards, and never until he was accidentally informed whilst attending his duty in Parliament, in the winter of 1821, of the sale of his lands at the suit of Henry John Boulton,

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did he hear verbally or by letter of its progress. That immediately after he was so served with the declaration and summons, your Petitioner wrote to the said Henry John Boulton upon the subject, requesting to be informed of the progress of the said suit, but receiving no answer, he imagined the same was dropped.

That on looking into the proceedings in the said suit, he finds the following to be the statement:—

The summons issued the thirty-first day of May, and was returnable on the first day of Trinity Term, 1819. That on the thirteenth day of July following, on the affidavit of service of the same, on this Deponent, the declaration and summons were fyled in the Crown Office, and on the same day an appearance entered in the same office by the said Henry John Boulton for your Petitioner. That on the same day an affidavit was fyled in the said office, made by a clerk of the said Henry John Boulton, that the place of residence of your Petitioner "in the Home District" was unknown to the person who made the affidavit. That on the same day a demand of plea was put up or fyled in the said office, and accompanied the said affidavit. That on the nineteenth day of June, four days afterwards, interlocutory and final judgment was signed against your Petitioner, and execution issued against the personal effects of your Petitioner to the Sheriff of the Home District for the amount of the bond, notes and costs. That in his declaration against your Petitioner, the said Henry John Boulton declared in debt on the bond and note together, signed judgment on the same together, and issued execution against your Petitioner for the same.

That the execution against your Petitioner's chattels (directed to the Sheriff of a District in which it was notorious to the Plaintiff, as well as to every other person who knew him, that he did not reside,) was returnable on the first of Michaelmas Term in the same year, and was fyled on the return day with the Sheriff's return of "no goods;" and on the same day, execution was issued against the lands of your Petitioner, directed to the Sheriff of the Johnstown District, and returnable last of Michaelmas Term, A.D. 1820, upon which your Petitioner is informed a most valuable Lot situated in the Township of Nepean, in the District of Bathurst, on the River Ottawa, and adjoining most important water privileges, and not the one mortgaged, has been sold to satisfy the said execution.

That by the tenth Section of the Act of the 34th of George the Third, regulating the practice of the Court of King's bench, and under which Act the process in the said cause was issued, it is expressly enacted, "That in all actions or suits where the Defendant or Defendants reside without the limits of the Home District, or District where the Court shall be holden, eight days shall be allowed after such demand of plea, as the ordinary time within which they shall be required to fyle their plea, &c." But that notwithstanding the said Act, the said Henry John Boulton, who perfectly knew the residence of your Petitioner to be within the District of Niagara, and not in the Home District, not only from having served him with the writ there, but also, from the letter which your Petitioner wrote to him after the action was commenced, proceeded to sign not only interlocutory but final judgment within four days after demand of plea, and that put up or fyled in a District where he well knew your Petitioner did not reside.

That your Petitioner is informed by professional gentlemen, that in no instance upon judgment by default, on a promissory note, can execution be issued, until the note has either been to a jury to assess the damages, or been sent by a rule of Court to the proper officer, to compute the principal and interest; but that notwithstanding this rule of law, execution after judgment by default was at once issued on the promissory note so given by your petitioner to the said Henry John Boulton.

That by a general rule of the Court of King's Bench, in the 40th year of the late King, it is expressly ordered, that in future, the note or bond is to be produced for

the inspection of the judges, "when a motion is made to refer them to the master," but that the said Henry John Boulton, not only did not produce either the note or bond to the judges, but did not even move the Court to have them referred to the master.

That by another general rule of the said Court made in the same year, it is expressly, "ordered, that from and after the end of this (Michaelmas) Term, the clerk give no writ of execution on default, without an order of the Court in Term time, or fiat of a judge in vacation." That notwithstanding this rule, then in full force, the said Henry John Boulton proceeded to sue out execution against your Petitioner, on a judgment by default without either an order from the Court or fiat from the Judge.

That by another Rule of the said Court made in Hilary Term, in the 47th year of the same King, it is also expressly "ordered, that in all cases of Judgment by default, on Bonds, conditioned for the payment of money, a rule *Nisi*, to refer the Bond to the master for taxation, shall not be necessary, but a notice of motion for the peremptory rule shall be given in writing to the Defendant, or his Attorney, at least thirty days before Hilary and Easter Terms, and twenty-one days before Trinity and Michaelmas Terms respectively," which rule shall accordingly be made absolute, in the first instance, on affidavit of such notice. That notwithstanding this rule was in full force at the time of signing the judgment against the Petitioner, he never received, nor did the said Henry John Boulton ever give the above required notice to your Petitioner, or to any Attorney for him.

Your Petitioner further represents, that as the said condition of the said Bond recited the said Mortgage, and professing therefore to be only collateral security, your Petitioner was entitled to the benefit of an Act of the Legislature of the Mother Country and in force in this Province, requiring in behalf of such Defendants, that the Plaintiff shall set forth on record, the condition of such Bond, assign breaches thereof, and assess damages before a jury, and your Petitioner is informed that according to law no execution can in such case issue till such assessment has taken place. But in the suit against your Petitioner, the condition of the Bond is wholly suppressed and does not appear on the record.

Your Petitioner found in the course of the applications made by him to the Court of King's Bench for relief, that the following rule was insisted upon as a vindication of the judgment secretly obtained as aforesaid.

Michaelmas Term, SCOTT, C. J. }  
THORP, J. }

It is ordered, that from and after the first day of Hilary Term next, in all cases where the Defendant has not appeared either in person or by his Attorney, judgment for default shall not be signed, without an affidavit first made and filed of a demand of plea having been served upon the Defendant personally, or by being left at his usual place of abode, if the same be in the District where the action is brought; and if the Defendant's place of abode be not in such district, that then the demand of Plea shall be entered in the office, accompanied by an affidavit, stating that the Defendant's place of abode within such district is not known to the Deponent, and that Judgment by default in such case shall not be signed till 4 days after such service or entry respectively:—By the Court.

(Signed,) JOHN SMALL,  
Clerk of the Crown.

Under this rule, persons are required to take an oath that must do violence to the conscience of the Deponent, inasmuch as it implies a belief that the Defendant's place of residence is in such District, but not known to the Deponent.

Your Petitioner also felt deeply aggrieved at the operation of the said Rule, not

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only because it arbitrarily deprived your Petitioner of a service of the notice at his place of abode, and warranted a judgment in 4 instead of 8 days, in defiance of the laws of this Province, but also because it violated the common principles of justice, by requiring notice to be served upon the residents of the Home District, while it favored the Attorneys of this Town, by exempting them from the trouble of giving such notices to those Defendants, who from their remoter residence from the Crown Office in the outer districts, particularly needed a rule of the said Court to enforce, rather than to supersede, the just enactment of the Provincial Legislature, for their protection.

That on being informed as before mentioned, of the sale of your Petitioner's lands, at the suit of the said Henry John Boulton, (and which was the first intimation he ever had of the progress of the said suit), your Petitioner immediately caused the proceedings to be looked into, and finding the above gross irregularities in the proceedings, he caused an application as soon as Counsel could be heard, to be made to the Court of King's Bench for relief, in setting aside the judgment and execution which had been so manifestly obtained against every rule and order of the said Court: but after argument, the Court decided it came too late.

That your Petitioner subsequently caused another application to be made on the same and other grounds to set aside this judgment, conceiving that it had not been fully argued, but it was again decided against him, on the grounds of the former decision, although the Court expressed a strong wish to interfere, if it could consistently with its rules.

Your Petitioner also humbly states that on the second application made for relief against this judgment, the Judges of the said Court upheld the same on the ground that the matter had been before heard and determined by them, and that according to an ancient rule of Court in the reign, as your Petitioner believes, of one of the James's, no matter heard by Counsel on both sides and on which the opinion of the Court had been given could be re-opened, and that the Counsel attempting it was liable to be silenced for one year, and should the Court be again troubled a second time in like manner, they would desire to see the penalty inflicted; and your Petitioner cannot but feel and express the oppression which he suffers from the unjust adherence to one rule of court for the purpose of upholding against your Petitioner a judgment which had been obtained by the violation of three other rules of court equally solemn and binding, and even in violation of several legislative enactments in this Province and in England, the due and honorable observance of which by the said Henry John Boulton would have been an ample protection for your Petitioner against the ruin and injustice brought upon him.

That in the year 1824, immediately after the last decision, as a last resort to get rid of this extraordinary judgment, your Petitioner was advised to bring a writ of error *coram nobis* to reverse this said judgment, that being, in the opinion of his Counsel, his only chance; but the difficulty lay in procuring the writ, as it is an original one which issues out of Chancery, and there being no Court of that description in this Province. This difficulty was, however, at last surmounted, the writ obtained under the great seal of the Province, error assigned and pleaded to, and the matters argued in the vacation of Trinity Term, A.D., 1825, before two of the Judges, Mr. Justice Boulton being absent in England, and judgment was to be given in the following Term.

That on applying for judgment, so far as your Petitioner could judge, the Judges seemed divided in their opinions, and that therefore your Petitioner would have received nothing by a division of opinion—but without giving judgment, the decision was, that the matter must stand over till the Bench was full.

That this was to your Petitioner tantamount to a decision against him, inasmuch as Mr. Justice Boulton had on a former occasion, as before stated, refused to try a

cause in which he had been interested for your Petitioner, and could not now of course be expected to give an opinion either way as the greater part of the money recovered by this very judgment had been received by him.

That strange as it may seem, the Sheriff of the Johnstown District, instead of selling the Lot, so mortgaged by your Petitioner to the said Henry John Boulton, and thus as it were foreclosing the same, sold another and still more valuable lot belonging to your Petitioner, and the same was purchased, as your Petitioner has been informed, by Levinus P. St. Lawrence, Esq., who has since been elevated to the Bench.

That your Petitioner, under these circumstances, would not feel it proper, and has been advised not to apply to the Court for their judgment, which your Petitioner thinks, under the very peculiar circumstances of the case, could not be had, for the same reason that the Honorable Mr. Justice Boulton once refused to try a case for him.

Your Petitioner humbly represents, that after submitting to many losses and afflictions which would break the heart of almost any man, he found that the most valuable remnant of his property had been most cruelly sacrificed, under this irregular and nefarious judgment, and unless relieved by the interposition of your Honorable House, he shall have to number himself among those who have fallen victims to injustice and oppression in this Province.

That there being no higher Court in this Province, to which your Petitioner can now resort, he has thus petitioned your Honorable House to interfere and grant him such relief as to your Honorable Body may appear just.

And as in duty bound will ever pray.

ROBERT RANDALL.

York, January 19, 1828.

Certified to be a true copy.

JAMES FITZGIBBON,  
Clerk of Assembly.

## No. 46.

### Report of the Committee of the House of Assembly of Upper Canada, in 1828, upon the above Petition.

[Appendix to Journals of Assembly of U.C., year 1828.]

[NOTE.—The Special Committee appointed by the Legislative Assembly of Upper Canada, in 1828, to inquire into Mr. Randall's complaints, was composed of B. C. Beardsley, Esq., senior Member of the Law Society; Hon. John Rolph, now Crown Lands Commissioner; Hon. John B. Robinson, Chief Justice; Hon. M. S. Bidwell, Barrister, and Captain John Matthews, Royal Artillery. Their Report, taken from the Journals of that year, was as follows]:—

“The Committee to whom was referred the Petition of Robert Randall, Esquire, with power to send for persons and papers, and report thereon, have inquired into the same, and respectfully submit the following Report:—

“It is admitted that the demand of Mr. Boulton against Mr. Randall was for professional services, rendered by himself and the Honorable D'Arcy Boulton, late a Judge of the King's Bench. The principal charges are £50 for business

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"alleged to be done by the Honorable D'Arcy Boulton, before his elevation to the Bench, and £50 to Henry J. Boulton, being principally a charge of five guineas a day, for eight days in attending an arbitration at Niagara, in the Niagara District, for the Petitioner, in a suit, Robert Randall *vs.* Elijah Phelps, in the Court of King's Bench, in which five guineas have been previously paid as a retaining fee, and not included in the account for which the bond was given. In security for the payment of the said sum of one hundred pounds, the Petitioner gave a mortgage to Mr. Boulton of Lot No. 11, in the 1st Concession on the Rideau, in the Township of Nepean, and which mortgage is recited in the condition of the bond upon which the action was brought. The cause R. Randall *vs.* Elijah Phelps, came on for trial at the Niagara Assizes, in the year 1818, where Mr. Justice Boulton presided, and Mr. Henry J. Boulton attended, as Counsel for the Petitioner, the Plaintiff in the cause. On the day upon which the trial was to take place, and a short time before it was called on, the Petitioner, at the request of Mr. Boulton, gave him his note for twenty-five pounds, payable the first day of May following, as a Counsel fee for the expected trial. The Petitioner proceeded to collect his witnesses, and Mr. Boulton called on the cause, when the Judge refused to try it on the ground of his having formerly acted as Attorney in it for the Plaintiff. The case was therefore not tried. Upon this note, as well as upon the bond, Mr. Boulton recovered the judgment, against which the Petitioner complains.

"At the subsequent trial, Mr. Boulton did not attend, and it appears that taking offence at the want of confidence which he inferred from a letter written to him by the Petitioner, he did not feel himself bound, without a further request, and a further fee, to continue his professional aid in the suit. This will be seen from the copies of Mr. Boulton's letters annexed, one dated 24th May, 1819, and the other 8th July, 1819. The Petitioner complains, in the first place, that Mr. Boulton, at the time he took the note for twenty-five pounds, knew the cause would not be tried. This is denied before your Committee by Mr. Boulton. The Attorney General, (now Mr. Chief Justice Robinson,) states in his evidence that he expected the refusal of the Judge to try the cause, though unapprised of it. He also states that he has an indistinct recollection that the Judge, about the time of arranging the Circuits, expressed his reluctance to try the cause. The House can judge how far it would have been judicially correct for Mr. Justice Boulton to try the cause, in which he had been Attorney and Counsel; and therefore how far there was a reasonable presumption for Mr. Boulton, that the cause would not be tried, under such circumstances; and how far the note for twenty-five pounds should have been retained after the immediate failure of the consideration for which it was given.

"Mr. Boulton prosecuted Mr. Randall for the recovery of the one hundred and twenty-five pounds, upon the bond and note, and the following is an abstract of the proceedings in the suit:—

#### " IN THE KING'S BENCH.

"HENRY JOHN BOULTON, Plaintiff; *vs.* ROBERT RANDALL, Defendant.

"This action was commenced by a writ of summons in a plea of debt, issued from the Crown Office, at York, in the Home District, on the thirty-first day of May 1819, returnable the first day of Trinity Term, 1819, being the fifth day of July of that year. This summons, with the declaration annexed, was filed in the said Crown Office on the thirteenth day of July, 1819, with an affidavit made by Samuel P. Jarvis, before Thomas Dickson, on the 24th day of June, 1819, stating that the same was served on the Defendant by the Deponent, on the twenty-second of June, of the same year. On the said 13th day of July, 1819, an appearance for said Defendant in said cause, was entered in the said office by said

" Plaintiff, and on the same day an affidavit made on the 13th day of July, 1819, before John Small, Clerk of the Crown, by the present Honorable James B. Macaulay, [now Chief Justice of the Common Pleas, U.C.,] then a student at law with the said Henry John Boulton, stating that the place of residence of the Defendant in the Home District was unknown to the Deponent, and also a demand of plea, were filed in the Crown Office. On the 13th day of July, 1819, interlocutory judgment was signed, and final judgment entered for two hundred and twenty-five pounds debt, and five pounds three shillings and eight pence, damages and costs, amounting altogether to the sum of two hundred and thirty pounds. On the 5th of October, 1819, a writ of *fieri facias*, against the goods and chattels of the Defendant, was issued upon a *præcipe* filed by the Plaintiff, directed to the Sheriff of the Home District, returnable on the first day of Michaelmas Term following, being the first day of November, 1819. This execution, with a return of *nulla bona*, by the Sheriff of the Home District, was filed in the said Crown Office on the return day, and on the same day a writ of *fieri facias* against the Defendant's lands and tenements was issued, (upon a *præcipe* filed by the Plaintiff,) directed to the Sheriff of the Johnstown District, and returnable the last day of Michaelmas Term, 1820, which writ was filed in the said office on the seventeenth day of March, 1825, with the following return by the Sheriff of the Johnstown District:—

" ' By virtue of this writ to me directed, I have caused to be made by the public sale of the lands and tenements of the within named Defendant, Robert Randall, (that is to say,) Lot No. Forty in the first Concession of Nepean, in the Johnstown District, together with its broken front, in front thereof, on the Ottawa or Grand River, the debt and damages within mentioned, which I have ready before the Lord the King, to be rendered to the said Henry John Boulton, for his debt and damages aforesaid, as within I am commanded.

(Signed,) "JOHN STUART,  
" Sheriff of the District of Johnstown."

" That on the 7th day of November, 1821, a motion was made to the Court, to set aside the judgment and execution upon an affidavit of the Defendant, upon which a rule was granted to show cause; and upon cause shewn, the rule was discharged by the Court.

" And that on the twenty-third day of January, 1824, a similar application was made to the Court, upon an affidavit of the Defendant; and upon cause shewn and an affidavit filed by Plaintiff, on the 30th April, 1824, the rule was discharged.

" On the twenty-fourth day of June, 1824, a writ of error *coram nobis*, under the great seal of the Province, was granted; error was assigned by the Defendant in this case on the 13th day of December, 1824, and the Plaintiff in this case pleaded thereto on the 25th day of January, 1825.

" The foregoing is a correct schedule of the proceedings in this cause, no other proceedings in the case have been filed or entered in the Crown Office. There does not appear to have been any assessment of damages by the Court, or a Jury, or any order of the Court or fiat of a Judge thereof, for judgment or for any execution. In obtaining this judgment, Your Committee notice the following violations of the then existing law. By the tenth Section of the Act of the 34th of Geo. 3rd, regulating the practice of the Court of King's Bench, and under which Act the process in the said cause was issued, it is expressly enacted, "That in all actions or suits where the Defendant or Defendants reside without the limits of the Home District, or the District where the Court shall be holden, eight days shall be allowed after such demand of plea, as the ordinary time within which they shall be required to file their plea, &c." But notwithstanding the said Act, the

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" said Henry John Boulton, who perfectly knew the residence of the Petitioner to be within the District of Niagara, and not in the Home District, proceeded to sign not only interlocutory but final judgment within four days after demand of plea, and that put up or fyled in a District where he well knew the Petitioner did not reside.

" This prejudicial violation of the rules prescribed by the Statutes of the Province, made for the protection of Defendants, is attempted to be justified by a prevailing practice under the following rule of Court:—

" SCOTT, C. J. } " It is ordered, that from and after the first day of Hilary  
" POWELL, J. } " Term next, in all cases where the Defendant has not appear-  
" CAMPBELL, J. } " ed in person or by his Attorney, judgment by default shall  
" Michaelmas, } " not be signed, without an affidavit being first made and fyled  
" 54th Geo. III. } " of a demand of plea having been served upon the Defendant  
" or by being left at his usual place of abode, if the same be in the District where the  
" action is brought, and if the Defendant's place of abode be not in such District,  
" that then the demand of plea shall be entered in the office, accompanied with an  
" affidavit, stating that the Defendant's place of abode within such District is not  
" known to the Deponent, and that judgment by default in such cases shall not be  
" signed till four days after such service or entry respectively."

" This rule if so construed as to warrant the practice contended for, carries  
" injustice upon the face of it. If a Defendant lives in the Town of York, [now  
" Toronto], within the precincts of the Home District, the demand of plea must be  
" served upon him, or left at his usual place of abode; but if he lives in remoter  
" settlements in the very Eastern and Western extremities of the Province, the  
" eight days given by the Statute are arbitrarily reduced to four, and the notice,  
" instead of being left at his abode, is fyled in an office to which, from his remote-  
" ness, he cannot have access, and of the proceedings in which, from the inevitable  
" difficulties of communication, he cannot be reasonably apprized.

" The affidavit required by this rule of Court to consummate its object, is also of  
" a most extraordinary nature. " If the Defendant's place of abode be not in such  
" District, then the demand of plea shall be entered in the office, accompanied with  
" an affidavit, stating that the Defendant's place of abode, within such District, is  
" not known to the Deponent."

" In the cause now the subject of complaint, the summons was served upon the  
" Petitioner in the Niagara District, where he had resided for a number of years,  
" and Mr. Boulton admits that the place of his [Robert Randall's] abode was known  
" to him, and to the Clerk under whose oath he was enabled to sign his judgment.  
" It is implied that the Deponent believes the place of abode to be in the Home  
" District, but not known to him.

" It would require strong language to give a suitable reprobation of a rule of  
" Court which is equally subversive of the rules of good conscience and statutory  
" law.

" The Committee desire to remark, that from the evidence, it appears that Mr.  
" Boulton acted upon the rule in many other cases in which he had no personal  
" interest, and the profession generally did the same.

" The Judgment appears to have been in several other respects obtained contrary  
" to the practice required by the Court, which practice had it been followed or en-  
" forced, would have afforded some protection against undue advantages and sur-  
" prise. The following rules were not observed:—

" Michaelmas, { ELMSLEY, C. J. } " RULE 8. It is ordered, that in future,  
" 48th Geo. III. { POWELL, J. } " the note or bond is to be produced for the  
" { ALCOCK, J. } " inspection of the Judges when a motion  
" is made to refer them to the master."

"The Court require the note and bond to be produced for the inspection of the Judges, a rule which it is presumed was intended to prevent fraud and maintain unsullied the character of public justice. And when your Committee consider the irregularities disclosed in these proceedings, and an attempt to justify them by their frequency, they cannot but feel that the rule was as necessary as it was well intended.

"The following rule of Court was also obviously intended to prevent undue advantages and surprise, by the violation of which rule Mr. Boulton had an execution against the Petitioner's lands and tenements, before he could by a legal and regular course have obtained a rule absolute to sanction his proceedings.

"Hilary, 47 } SCOTT, C. J. } "RULE 21. It is ordered that in future in all  
"Geo. III. } THORP, J. } "cases by judgment by default on bonds conditioned for the payment of money, a rule *Nisi* to refer the bond to the Master for taxation shall not be necessary; but in lieu thereof a notice of motion for the peremptory rule shall be given in writing to the Defendant or his Attorney, at least thirty-one days before Hilary and Easter Terms, and twenty-one days before Trinity and Michaelmas Terms, respectively, which rule shall accordingly be made absolute in the first instance, on an affidavit having been made of the service of such notice."

"The execution was also obtained with the same irregularity, and in defiance of the known rules of Court, as appears from the following rule:—

"Easter, 40 { ELMSLEY, C. J. } "RULE 10. It is ordered that from and after  
"Geo. III. { POWELL, J. } "the end of this Term, the Clerk give no writ of  
"ALCOCK, J. } "execution on a judgment by default, on any bond, without an order of Court, in Term time, or the fiat of a Judge in vacation."

"Mr. Boulton, however, dispensed with any order of Court in Term time, or fiat of Judge in vacation.

"The bond upon which the action was in part founded, was a mortgage bond, a copy of which is annexed. It appears on the face to be collateral security, and how far, therefore, Mr. Boulton was bound to suggest breaches according to the Statute, Your Committee have not inquired.

"It appears that several applications have been made to the Court of King's Bench for relief, without avail. The refusal of the Court to interfere, was not on the ground that the application had no merits, but on the principle that the objection came too late. Your Committee, however, think it right to observe, that from the course pursued by Mr. Boulton, the Petitioner was deprived of those notices to which he was entitled by the written law of the land, and the rules of the Court.

"Irregularities may be waived after notice of them by delay, or by taking a step in the defence; but it would be productive of incalculable injustice if all notices could be suppressed, and a suit be clandestinely carried through all its stages at the sacrifice of all law: and the ruined Defendant should be precluded from relief, while the Plaintiff sheltered himself under his own wrong. If this can be law, Your Committee would recommend a Legislative provision against it, for no Defendant should be deemed guilty of irremedial neglect when the Plaintiff keeps him in the dark by his own wrong.

"Mr. Boulton has received his principle and interest upon the bond and note. The fee of the land mortgaged is also in him, and there is no Court of Chancery to interfere. The land sold at Sheriff's sale under this judgment is, undoubtedly, most valuable, and it appears to have been sold before the Petitioner knew there was a judgment against him. Part of the land sold under the judgment is owned by the present Hon. Mr. Justice Sherwood, brother-in-law to Mr. Boulton.

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"There is, however, no evidence to shew that Mr. Boulton was concerned in the sale or the purchases.

"Your Committee have to remark that Mr. Boulton was conducting a cause for himself against his own client; and when they consider the nature of the debt, the great and multiplied irregularities by which the judgment and execution were obtained, the great value of the property sacrificed, and the expensive and fruitless endeavours of the Petitioner to obtain a reversal of the proceedings, they do not hesitate to recommend relief. Independent of the interest of one of the Judges, it appears that the Court of King's Bench, if they set the proceedings aside, could not afford adequate relief, and therefore Your Committee have reported a Bill enabling the Honorable Mr. Justice Willis to inquire into the matters alleged in the petition, and to do justice between all the persons interested. The Chief Justice is not included in the Bill, as it is publicly reported that he is about to visit England; and, under such circumstances, the object of the measure might be defeated, and the ends of public justice not be answered, if he were included. Mr. Boulton complains of Mr. Randall for having misrepresented the value and quantity of the land mortgaged to him; and the Committee have annexed the evidence and documents adduced in support of the charge.

"All which is respectfully submitted.

(Signed,)

"B. C. BEARDSLEY,  
"Chairman."

## No. 47.

### Proceedings of the Select Committee.

[From U. C. House of Assembly's Journals, 1828.]

The Committee on the petition of Robert Randall, Esquire, met in the Joint Committee Room, February 13th, 1828.

#### PRESENT :

Messrs. Attorney General [now Chief Justice Robinson], Matthews, Rolph and Bidwell.

Dr. *Lefferty* attended, and was examined :—

He states that he was present at the Assizes for Niagara in 1818, where a cause of Randall vs. Phelps was stated to have been entered for trial—Mr. Justice Boulton presided—saw Mr. Randall there—does not know on what day of the sitting of the Court it was. He was going from the Court House to Town for his witnesses,—understanding that Mr. Boulton (the Solicitor General,) was going to call the cause on. While he was absent Mr. Boulton did call the cause on, and the Judge declined trying it, on the ground that he had been Attorney for the Plaintiff, and had instituted the action,—Dr. Lefferty then left the Court House and went to Town, and meeting Mr. Randall on the way, told him that his cause would not be tried; at which he appeared much dissatisfied, and said he had that morning given Mr. Boulton his note for 100 dollars for coming over to conduct his trial—Mr. Randall went into Court, and in his presence urged the trial of the cause, but the Judge positively declined. The Judge being pressed by Mr. Randall said he had objected to taking that Circuit, because he was unwilling to try that cause—knows that Mr. Randall paid something more than 40 dollars to an Innkeeper at Niagara for the expenses of some of his witnesses.

Mr. Randall produces a letter from Mr. Boulton, said to have been received 1st

May, 1819, (marked F.)—also a letter from Mr. Boulton, dated May, 1819, (marked G.)—also a letter from Mr. Boulton, of 8th July, (marked H.)—also a copy of a letter from himself to Mr. Boulton, dated June 29th, 1819, (marked I.)—this letter he states he sent by one Jacob Dawn, to York; also a paper marked K, certified by the Deputy Clerk of the Crown, as being a correct schedule of the original papers in the cause of Mr. Boulton *vs.* Randall—was served, with process, on 22nd June, 1819, and on the 29th June, wrote that letter marked I.—He saw Mr. Randall at the Assizes, in August, 1819, but did not speak to him respecting the suit.

February 21st.

The Committee met again.

The Petitioner attended.

Dr. *Lefferty* again called in and examined:—

Says, he remembers in 1816, Mr. Justice Boulton, then Attorney General, conducted the trial of the same cause of *Randall vs. Phelps*—A nominal verdict was given and the cause referred to arbitration—no award was made, and it was tried at the next Assizes for Niagara.

Mr. Randall states to the Committee that a different lot from that mortgaged to Mr. Boulton was sold in execution to satisfy his debt, which Mr. Boulton says he has no doubt might have been, for he gave no particular directions to the Sheriff on the subject.

*William Morris*, Esquire, called in and examined by Mr. Randall:—

Says, he has no acquaintance with Mr. LeBreton—knows Lot No. 40, in Nepean—called Point Nepean—heard it was sold either to Captain LeBreton, or Mr. Sherwood, now Judge Sherwood—Mr. Morris's brother attended the sale—it took place at the Court House in Brockville, Nepean, being then part of the District of Johnstown—does not remember how long he had heard of the sale before it took place.

He authorized his brother, being at Brockville, (Alexander Morris,) to bid as much as £300 for it; he afterwards found that his brother had gone as far as £449 for it, but not liking to go further, it was bid off to Captain LeBreton or Mr. Sherwood for £450.

Being asked by Mr. Randall whether he did not tell him, Mr. Randall, during the last Parliament, that he had only heard of the sale the night before it took place, answers that it was impossible, as he had himself walked to point Nepean, (50 miles,) to see the Lot before the sale, and had in consequence sent the directions to his brother. A Sheriff's notice of the sale was put at his, Mr. Morris's shop door in Perth, which is as public a place as any merchant's shop in Perth; it was put up as notices always are, on the inside of the door; knew nothing of the intended sale till he saw that notice—he went down, in consequence of a conversation with Dr. Thom, who had received information from some person on the Ottawa, that Point Nepean was a valuable situation, and they consequently both went on foot to see it; after his return he wrote to his brother, by post, the instructions spoken of, and he thinks that the sale took place a few days after, but he does not distinctly recollect the time.

Had he been present at the sale, he thinks he would have given as high as 700 or 800 pounds for it. If the property had been his, he thinks he would have been reluctant to have taken £2,000 for it.

Captain LeBreton was at the sale; and his impression has always been that Mr.

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Sherwood either participated in the purchase or assisted Captain LeBreton in making it: but he knows not how the fact really was.

The Sheriff was John Stuart, Esquire, who is still Sheriff of the District of Johnstown; he is brother-in-law to Mr. Sherwood, and to the Solicitor General.

Thinks Mr. Sherwood knew nothing of the value of the Lot until he was applied to by Captain LeBreton to join or assist him in the purchase.

Neither saw nor heard of any other notice of the sale in Perth, or the neighborhood, or in the neighborhood of the Lot—has never conversed with any of the Messrs. Wrights, of Hull, about the Lot—thinks they had no knowledge of the intended sale—found at Morris's Run, about five miles from the Point, that they were ignorant of it. The notice of the sale was not likely to have attracted the attention of people in general, as the Country was then so little known.

He considered the place of great value, from its situation with respect to navigation and water privileges, but not from any idea or knowledge he had of any great expenditure being likely to be made there by the Government, further than building a store or two for the reception of emigrants.

He meant, if he had bought it, to have given two or three acres to the Government for such a purpose. Thinks the Lot not worth so much now as it was then, from an establishment which has been made on a neighboring Lot by the Government since; which has occurred, it is understood, from the refusal of Captain LeBreton to part, on reasonable terms, with the Lot or part of it, for the purposes of the Government.

*Friday, February 22nd.*

The Committee met again.

*William Morris* called again and examined:—

Asked, what sum he would have taken for allowing any person to select an acre from the Lot at Nepean Point, had it been his?—Says he would not have taken less than £500, and perhaps not that sum—because the best mill seat would probably be selected; there are several mill seats on the Lot.

Seven years ago, a village was laid out upon the Lot in question by the present proprietors—does not know what number of houses are built there, but thinks not more than three or four.

The Attorney General [Hon. John B. Robinson], examined:—

Was retained in 1817, to defend Elijah Phelps against Robert Randall, in which a verdict had been rendered in favor of Randall at the preceding Assizes, for £10,000—that verdict was set aside and a new trial granted in October, 1818. He was present as Counsel for Defendant at Niagara—he rode part of the way with Mr. Justice Boulton on his way to the Assizes—it was in October, 1818—cannot say where he staid at Niagara.

He knew no more than any stranger in Court that the Judge intended not to try the cause mentioned above—that he went as Counsel prepared for the defence, when the Judge refused to try it. The Solicitor General seemed annoyed at it, and so expressed himself to him, (the Attorney General), and thought it an unnecessary scruple on the part of the Judge; that he had been the Plaintiff's Attorney in the suit: but the Attorney General thought otherwise, and expected such refusal, though as unapprized of it as any stranger. In the course of conversation the Judge might have expressed his reluctance to try the cause, and he has an indistinct recollection of its being the case about the time of arranging the Circuits; but he has no reason to think that the Judge had positively made up his mind when he left York.

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The Solicitor General said that Randall had come with the intention to have it tried—that he himself had come with that expectation, and only for that cause, and that it would be a vexation to Randall.

He was never retained by Mr. Boulton as his Counsel upon any of the applications made by Mr. Randall to set aside the proceedings in *Boulton vs. Randall*. That either on the application of Mr. Stuart or Mr. Rolph, or both, he did, at the request of the Solicitor General, the grounds of objection which he stated to be against the motion, and perhaps engaged in answering the rule *Nisi*. That the Solicitor General applied to the Attorney General, to oppose the Writ of Error, and he would have done so had he been present. He suggested to the Solicitor General not to object to the legality of the Writ in error, but to allow the irregularities to come into discussion in that shape before the Court, if the Court did not themselves object to it.

To this the Solicitor General assented.

But as the Attorney General then went to England, is not acquainted with the further progress of the matter.

The cause of *Randall vs. Phelps*, was tried at Niagara, in 1819, before Powell, C. J. and a special Jury. Randall in person pleaded his own cause, and not by the Solicitor General, who was not present. He heard Randall, in pleading his own cause, say that he was abandoned by his Counsel, the Solicitor General [Hon. Henry J. Boulton], and has no doubt Mr. Randall appealed to the indulgence of the Court upon matters of law, under the circumstances in which he was placed. The cause was called on at the request of Mr. Randall himself; that he thinks it likely the Judge told him, Randall, that every legal advantage should be afforded to him. The cause went off upon no legal objection; but it went to the Jury on the evidence; the Chief Justice charging strongly in favor of the Defendant.

#### *Saturday, 23rd.*

The Committee met.

Mr. Randall attended.

Mr. Morris again examined:—

There were but four or five inhabitants in the Township of Nepean at the time of the sale, and these, he thinks, were what are called squatters. The river Goodwood empties into the Rideau ten or twelve miles from the mouth of the Talter; thinks there was not an inhabitant on the river Goodwood nine or ten years ago. Had he never seen any particular Lot on the Rideau below the river Goodwood, which might have been advertised for sale, he would not have given much for it—it is good land, however, and thinks it would now be valuable. At the time spoken of, in 1819, thinks land so situated would have been worth about seven and six pence per acre, though now it is worth five or six dollars—would not have thought eighty acres in that situation a good security for £100; there is no mill seat on the Rideau; on the place spoken of it is dead water.

Mr. Boulton attended, and produced to the Committee a mortgage from Mr. Randall to him, dated March 17, 1817, which is the same referred to in the bond on which judgment was entered. The mortgage is upon Lot No. 11, in the first Concession of Nepean, on the Rideau, for £100; to be paid 1st January, 1818. The Lot is said in the mortgage to contain 200 acres. Mr. Boulton produced a certificate from the Surveyor General, that the lot thus mortgaged contains only 78 acres: and that the patent to Mr. Randall described lots Nos. 10 and 11 in the first Concession as containing together only 100 acres, and Mr. Boulton calls the attention

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of the Committee to the circumstance that in the mortgage, Lot No. 11 only was stated to contain 200 acres.

Mr. Boulton also produces an affidavit of Mr. Randall, sworn the 6th July, 1824, for the purpose of his qualification to be returned as a member, in which he describes the Lot in question, No. 11, as a broken Lot, whereas in his petition to the house, he states that he gave Mr. Boulton a mortgage on 200 acres of land. He also produces a certificate given by the Deputy Clerk of the Crown, setting forth various causes conducted to judgment by other Attorneys, viz.:—*Fothergill vs. Brice*; *Somers vs. Petit*; *Heron vs. DeWitt*; *McNider and Forsyth vs. Clarke*; in which the proceedings were precisely such against the Defendants residing out of the Home District as in the case against Mr. Randall.

And he remarks that, in the case of Mr. *Somers vs. Petit*, in which Mr. Baldwin was Plaintiff's Attorney, and judgment by default was obtained in the same manner, he (the Solicitor General) was Counsel for the Defendant, and did all he could to obtain relief against the judgment, but in vain; and the judgment was confirmed.

Mr. Beardsley, a member of the Committee, and also a Barrister and Attorney, states that it is perfectly notorious that the practice was so under the rule of Court, and that he heard many cases where the judgments were so obtained.

Mr. Boulton also produces his dockets, showing that his proceedings for clients in similar cases were precisely such as took place in his action against Mr. Randall.

In particular, he shows a cause in which he was Plaintiff's Attorney for James Samson, Esquire, against the Hon. William Dickson, a Member of the Legislative Council, whose residence in the Town of Niagara was known to every person, in which cause the proceedings were just such as those of which Mr. Randall complains.

Mr. Boulton also produced a writ, certified by the Clerk of the Crown, of judgments against Mr. Randall in other causes which were depending against him at the time he pressed the payment of his bond; among these is a case of *Thomas Clark vs. Robert Randall*, in which judgment was obtained for £41<sup>5</sup> 13s. 0<sup>1</sup>/<sub>4</sub>d. In this case, the Attorney General was concerned for the Plaintiff, and as he states that Mr. Boulton had obtained judgment against Mr. Randall a short time before Mr. Clark's could be entered up—and that he looked into the proceedings with a desire to set them aside if he could, to prevent his obtaining precedence of Mr. Clark, but finding them in accordance with the ordinary practice of the Court, as it appeared to him, he concluded there was no ground.

Mr. McDonald, M.P.P., called in, and examined:—

Mr. Boulton related to him that Mr. Randall had informed the Committee, that he (Mr. McDonald) had stated to Mr. Randall, that the advertisement of the Sheriff's sale of Mr. Randall's Lot, was put up with the face to the wall, and on the back written "a watch to be raffled for," and Mr. Boulton asks Mr. McDonald if the fact was so, or if he ever stated such a thing to Mr. Randall.

Mr. McDonald states that he never saw, never heard of, or saw any thing of the kind, and never did state any such thing to Mr. Randall; at least, that he would swear that to the best of his recollection he never made any statement of the sort.

Mr. Horner, M.P.P., called in by Mr. Randall:—

Says that he heard Mr. Randall say, four years ago, that Mr. McDonald had made the statement respecting the advertisement mentioned above; but he never heard Mr. McDonald say so.

Tuesday, Feb. 26, 1828.

Committee met again.

PRESENT:

Mr. Beardsley, Chairman; Messrs. Rolph, and Attorney General.

Mr. Justice *Sherwood* attended at the request of the Committee, and being examined in presence of the Petitioner, states he has been at the Falls on the Ottawa River; knows No. 40 in Nepean; it was sold at Sheriff's sale, at the suit of Mr. H. Boulton; Capt. LeBreton was purchaser at Sheriff's sale; soon afterwards, thinks within one or two days after, he, Mr. Sherwood, became purchaser from him of part: thinks the sale was in December, 1820. On the evening of the sale, as he thinks, Captain LeBreton came to him at Brockville, and stated, that a valuable Lot was to be sold at Sheriff's sale, situate on the Ottawa, where he, LeBreton, resided; that he wished to become the purchaser, but was not sure he had sufficient money, as other persons he understood had come in, intending to buy, and he proposed to Mr. Sherwood to join him in purchase, or to lend him money to enable him to buy. He stated to Capt. LeBreton, that he was not inclined to buy land at that time, but that he would inquire about the lot in question; that at any rate he would take part of the lot from him if he bought it, or would advance him the purchase money, if he would give him security.

Mr. Sherwood was present at the sale, but did not bid. Captain LeBreton bought it; there were other bids, and thinks lands of other persons were sold on the same day by the Sheriff in presence of the same bidders. Thinks between twenty and thirty persons attended; had seen the Sheriff's advertisement of the sale under Mr. Boulton's execution, before Captain LeBreton came to him, but knew nothing of the particular lot; and a day or two after the sale, he took from LeBreton a conveyance of half his interest in the lot, (an undivided moiety,) and became responsible to the Sheriff for the purchase money of which Captain LeBreton subsequently paid his half to Mr. Sherwood; the amount bid for the lot was £449, to the best of his recollection.

He does not know that any person united with Captain LeBreton in the purchase at Sheriff's sale, but thinks there was not; a partition was made some months after he took the deed from Captain LeBreton, as tenant in common.

Captain LeBreton has sold part of his moiety, as he thinks, to one Bellows. He (Mr. S.) has not yet sold any part of his portion, except that he made an exchange with Captain LeBreton of a small part after partition was made.

He has laid out the front of his proportion of the Lot into small lots, and Captain LeBreton, he has been told, has done the same; has never understood what price Captain LeBreton has put upon his share of the land. An application was made to him, from the Quarter Master General's Office, at the desire, as he understood, of the Commander in Chief, for a purchase of a part of the Lot; this was some time after the sale to him; has understood that a proposal was also made to Captain LeBreton, at Quebec, by the Commander in Chief, which, however, did not end in anything satisfactory.

Does not know what price was offered to Captain LeBreton; no specific offer was made to himself.

Considers the Lot valuable from its situation, affording a good landing place at the head of the navigation, and there is a good mill site, and perhaps several, on the Lot; the land is in general rough. There is a Town, he understands, laid out near it, called Bytown, and it is probable that that circumstance renders the Lot of less value than it has been supposed to be. When he was last at the Lot there were two government store-houses built of logs on the Lot, and a small dwelling house near that, kept there as an Inn. Has heard since, that a good house has been built by one Bellows, a Merchant, where he believes an Inn is now kept, and

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there is also another house in which one Hollister lived, who likewise kept an Inn, and has heard that another house has also been built there; one Firth is living with Berry in the house first spoken of.

To questions put by Mr. Boulton, states that he never understood the sale was intended to be kept secret by the Sheriff: has heard the Sheriff say that he sent advertisements to Nepean and Perth, and to several parts of the District: has no idea that the Sheriff was at all aware of the value of the Lot No. 40; he (Mr. S.) knew nothing of it till informed of it by LeBreton.

In 1821, Mr. Randall came to him (Mr. Sherwood,) at York, and spoke to him respecting the sale, saying that he understood the land had been sold, and that he was aware that he, Mr. Sherwood, owned part of it. Mr. Randall appeared to be dissatisfied with the judgment which had been obtained against him, saying that Mr. Boulton had not treated him well; he said that he had no knowledge of the sale till he was told of it during the sitting of the Legislature then in Session, by Mr. Morris or some other person.

At a subsequent Sheriff's sale of Mr. Randall's lands, at the suit of Mr. Clark, he, Mr. Sherwood, bought No. 11, in Nepean, on the Rideau; does not recollect the price; it was, he thinks, under £20, nearer ten than twenty; the quantity of land was somewhere about 60 or 70 acres; had this Lot been offered to him in 1816 or 1817, he would not have given a dollar an acre for it, but it might have been worth much more.

When he understood a question had been made out about the land (No. 40) being properly advertised by the Sheriff, he took pains to inquire; and so far as he can depend on the statement of the Sheriff, his belief is, that the land was as well advertised as Sheriff's sales usually were then, which was before the passing of the Statute on that head in 1822, and more regularly than they sometimes were in other cases: no fact has come to his knowledge to lead him to think otherwise, but the reverse.

*Robert Baldwin*, Esquire, a Barrister and Attorney, attended.—Recollects the rule of Court under which it is stated in the interlocutory judgment in *Boulton vs. Randall* was signed; was a Clerk in his father's office at the time the rule spoken of was caused to be in force; the practice was then agreeable to the rule; whether such practice was consistent with the Statute or not, he could not then judge. Remembers the cause of *Sommers vs. Pettit*, in which his father (W. W. Baldwin, Esquire,) was Attorney for the Plaintiff, and Mr. Boulton for the Defendant: upon reference to his father's docket, he finds that interlocutory judgment was signed under the same rule of Court as in *Boulton vs. Randall*; knows Mr. Boulton exerted himself as much as possible for the Defendant, but the judgment was finally entered on the assessment. That cause was an important one as to value: the judgment was for about £500. The interlocutory judgment in *Sommers and Pettit* was signed 29th July, 1820; demand of plea was put up in the Crown Office on 26th July, and affidavit filed that Defendant's place of residence in the Home District, was not known to the Deponent. Upon questions put to Mr. Boulton by Mr. Randall, Mr. Boulton states, that he was retained by Mr. Randall in *Randall vs. Phelps*, and received five guineas, and that Mr. Justice Boulton claimed £50 for his services rendered to Mr. Randall when he was at the Bar, which formed part of the sum for which the bond was given.

Mr. Randall being asked by Mr. Boulton, whether an account, of which a copy appears published in the Colonial Advocate of June 26, 1825, was not furnished by him to the Printer; and whether he, Mr. Randall, did not receive such an account from Mr. Boulton; he says he has no doubt it is so. Being asked as to the services specified in that account, he does not deny they were rendered, and does not remember whether he ever objected or not to any of the charges made.

Mr. BOULTON to Mr. RANDALL.

York, 8th July, 1819.

Sir,—From what has occurred, I suppose you do not wish me to advocate your two causes at the next Assizes: if that is the case, I should wish to know it immediately, as it will save me some trouble. Indeed I am not very anxious to be the advocate of a person who is so very illiberal in his sentiments, because I should expect (from the specimen in your former letter,) that should all my efforts prove of no avail, you would accuse me of not sufficiently exerting myself, and allowing the other side, from improper motives, to obtain undue advantages.

At all events, in order that I may not subject myself in future to the like treatment and similar observations, I shall expect the fee with my brief, to be advanced which will preclude all misunderstandings.

If possible to be procured, you should have the original note upon which the judgment in Mr. Clark's suit was obtained. You had better write to some of your friends in Montreal, to apply to the officer of the Court for it, who perhaps will give it up.

Your obedient Servant,

H. J. BOULTON.

To ROBERT RANDALL, Chippawa.

York, May 24th, 1819.

Sir,—I received your most extraordinary letter of the 17th instant, by Mr. Smith, which if there is any meaning at all to be given to it, is a very impertinent one, and such a one as I will not permit you or any other client to write to me with impunity. I would have you to understand, that I am not rendering you any professional assistance from what you may fancy popular reasons, and therefore any further than my duty to my client prompts me, I do not care a farthing about you. You gave me what I expected at the time, to be a security for £100; half for my own benefit, and the other for my father's. This security I find not worth half a dollar per acre, as there are no inhabitants in the Township. In addition to which, I have your note for £25 due on the first of this month, both of which sums, with interest, amount to nearly £140, and the security I have, independent of your personal responsibility, is not sufficient to guarantee the payment of one half that sum: and as I am not looking to the result of your business, as you call it, for my payment, I insist upon having the money, long due to me for my services already performed, paid or secured in a sufficient manner. Were you unable to do either, I should not perhaps expect or wish it, but in proportion as you oppose giving me what I have a right to, so in proportion shall I insist on it, as you can have no honorable or just reason for withholding it. If you will pay me down £50, so as to lessen the burthen upon the land, I will accept it, and let the remainder stand as it does. I return the cognovit for your signature, and patiently wait the return of the post. Mr. Jarvis, I fancy, will hand you this, who will give you a receipt for any money you may pay him. You may be certain I shall not retract one farthing.

Your obedient Servant,

H. J. BOULTON.

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"There is, however, no evidence to shew that Mr. Boulton was concerned in the sale or the purchases.

"Your Committee have to remark that Mr. Boulton was conducting a cause for himself against his own client; and when they consider the nature of the debt, the great and multiplied irregularities by which the judgment and execution were obtained, the great value of the property sacrificed, and the expensive and fruitless endeavours of the Petitioner to obtain a reversal of the proceedings, they do not hesitate to recommend relief. Independent of the interest of one of the Judges, it appears that the Court of King's Bench, if they set the proceedings aside, could not afford adequate relief, and therefore Your Committee have reported a Bill enabling the Honorable Mr. Justice Willis to inquire into the matters alleged in the petition, and to do justice between all the persons interested. The Chief Justice is not included in the Bill, as it is publicly reported that he is about to visit England; and, under such circumstances, the object of the measure might be defeated, and the ends of public justice not be answered, if he were included. Mr. Boulton complains of Mr. Randall for having misrepresented the value and quantity of the land mortgaged to him; and the Committee have annexed the evidence and documents adduced in support of the charge.

"All which is respectfully submitted.

(Signed,)

"B. C. BEARDSLEY,  
"Chairman."

## No. 47.

### Proceedings of the Select Committee.

[From U. C. House of Assembly's Journals, 1828.]

The Committee on the petition of Robert Randall, Esquire, met in the Joint Committee Room, February 13th, 1828.

#### PRESENT :

Messrs. Attorney General [now Chief Justice Robinson], Matthews, Rolph and Bidwell.

Dr. Lefferty attended, and was examined :—

He states that he was present at the Assizes for Niagara in 1818, where a cause of Randall *vs.* Phelps was stated to have been entered for trial—Mr. Justice Boulton presided—saw Mr. Randall there—does not know on what day of the sitting of the Court it was. He was going from the Court House to Town for his witnessess,—understanding that Mr. Boulton (the Solicitor General,) was going to call the cause on. While he was absent Mr. Boulton did call the cause on, and the Judge declined trying it, on the ground that he had been Attorney for the Plaintiff, and had instituted the action,—Dr. Lefferty then left the Court House and went to Town, and meeting Mr. Randall on the way, told him that his cause would not be tried; at which he appeared much dissatisfied, and said he had that morning given Mr. Boulton his note for 100 dollars for coming over to conduct his trial—Mr. Randall went into Court, and in his presence urged the trial of the cause, but the Judge positively declined. The Judge being pressed by Mr. Randall said he had objected to taking that Circuit, because he was unwilling to try that cause—knows that Mr. Randall paid something more than 40 dollars to an Innkeeper at Niagara for the expenses of some of his witnessess.

Mr. Randall produces a letter from Mr. Boulton, said to have been received 1st

May, 1819, (marked F.)—also a letter from Mr. Boulton, dated May, 1819, (marked G.)—also a letter from Mr. Boulton, of 8th July, (marked H.)—also a copy of a letter from himself to Mr. Boulton, dated June 29th, 1819, (marked I.)—this letter he states he sent by one Jacob Dawn, to York; also a paper marked K, certified by the Deputy Clerk of the Crown, as being a correct schedule of the original papers in the cause of *Mr. Boulton vs. Randall*—was served, with process, on 22nd June, 1819, and on the 29th June, wrote that letter marked I.—He saw Mr. Randall at the Assizes, in August, 1819, but did not speak to him respecting the suit.

*February 21st.*

The Committee met again.

The Petitioner attended.

Dr. *Lefferty* again called in and examined:—

Says, he remembers in 1816, Mr. Justice Boulton, then Attorney General, conducted the trial of the same cause of *Randall vs. Phelps*—A nominal verdict was given and the cause referred to arbitration—no award was made, and it was tried at the next Assizes for Niagara.

Mr. Randall states to the Committee that a different lot from that mortgaged to Mr. Boulton was sold in execution to satisfy his debt, which Mr. Boulton says he has no doubt might have been, for he gave no particular directions to the Sheriff on the subject.

*William Morris*, Esquire, called in and examined by Mr. Randall:—

Says, he has no acquaintance with Mr. LeBreton—knows Lot No. 40, in Nepean—called Point Nepean—heard it was sold either to Captain LeBreton, or Mr. Sherwood, now Judge Sherwood—Mr. Morris's brother attended the sale—it took place at the Court House in Brockville, Nepean, being then part of the District of Johnstown—does not remember how long he had heard of the sale before it took place.

He authorized his brother, being at Brockville, (Alexander Morris,) to bid as much as £300 for it; he afterwards found that his brother had gone as far as £449 for it, but not liking to go further, it was bid off to Captain LeBreton or Mr. Sherwood for £450.

Being asked by Mr. Randall whether he did not tell him, Mr. Randall, during the last Parliament, that he had only heard of the sale the night before it took place, answers that it was impossible, as he had himself walked to point Nepean, (50 miles,) to see the Lot before the sale, and had in consequence sent the directions to his brother. A Sheriff's notice of the sale was put at his, Mr. Morris's shop door in Perth, which is as public a place as any merchant's shop in Perth; it was put up as notices always are, on the inside of the door; knew nothing of the intended sale till he saw that notice—he went down, in consequence of a conversation with Dr. Thom, who had received information from some person on the Ottawa, that Point Nepean was a valuable situation, and they consequently both went on foot to see it; after his return he wrote to his brother, by post, the instructions spoken of, and he thinks that the sale took place a few days after, but he does not distinctly recollect the time.

Had he been present at the sale, he thinks he would have given as high as 700 or 800 pounds for it. If the property had been his, he thinks he would have been reluctant to have taken £2,000 for it.

Captain LeBreton was at the sale; and his impression has always been that Mr.

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Sherwood either participated in the purchase or assisted Captain LeBreton in making it: but he knows not how the fact really was.

The Sheriff was John Stuart, Esquire, who is still Sheriff of the District of Johnstown; he is brother-in-law to Mr. Sherwood, and to the Solicitor General.

Thinks Mr. Sherwood knew nothing of the value of the Lot until he was applied to by Captain LeBreton to join or assist him in the purchase.

Neither saw nor heard of any other notice of the sale in Perth, or the neighborhood, or in the neighborhood of the Lot—has never conversed with any of the Messrs. Wrights, of Hull, about the Lot—thinks they had no knowledge of the intended sale—found at Morris's Run, about five miles from the Point, that they were ignorant of it. The notice of the sale was not likely to have attracted the attention of people in general, as the Country was then so little known.

He considered the place of great value, from its situation with respect to navigation and water privileges, but not from any idea or knowledge he had of any great expenditure being likely to be made there by the Government, further than building a store or two for the reception of emigrants.

He meant, if he had bought it, to have given two or three acres to the Government for such a purpose. Thinks the Lot not worth so much now as it was then, from an establishment which has been made on a neighboring Lot by the Government since; which has occurred, it is understood, from the refusal of Captain LeBreton to part, on reasonable terms, with the Lot or part of it, for the purposes of the Government.

*Friday, February 22nd.*

The Committee met again.

*William Morris* called again and examined:—

Asked, what sum he would have taken for allowing any person to select an acre from the Lot at Nepean Point, had it been his?—Says he would not have taken less than £500, and perhaps not that sum—because the best mill seat would probably be selected; there are several mill seats on the Lot.

Seven years ago, a village was laid out upon the Lot in question by the present proprietors—does not know what number of houses are built there, but thinks not more than three or four.

The Attorney General [Hon. John B. Robinson], examined:—

Was retained in 1817, to defend Elijah Phelps against Robert Randall, in which a verdict had been rendered in favor of Randall at the preceding Assizes, for £10,000—that verdict was set aside and a new trial granted in October, 1818. He was present as Counsel for Defendant at Niagara—he rode part of the way with Mr. Justice Boulton on his way to the Assizes—it was in October, 1818—cannot say where he staid at Niagara.

He knew no more than any stranger in Court that the Judge intended not to try the cause mentioned above—that he went as Counsel prepared for the defence, when the Judge refused to try it. The Solicitor General seemed annoyed at it, and so expressed himself to him, (the Attorney General), and thought it an unnecessary scruple on the part of the Judge; that he had been the Plaintiff's Attorney in the suit: but the Attorney General thought otherwise, and expected such refusal, though as unapprized of it as any stranger. In the course of conversation the Judge might have expressed his reluctance to try the cause, and he has an indistinct recollection of its being the case about the time of arranging the Circuits; but he has no reason to think that the Judge had positively made up his mind when he left York.

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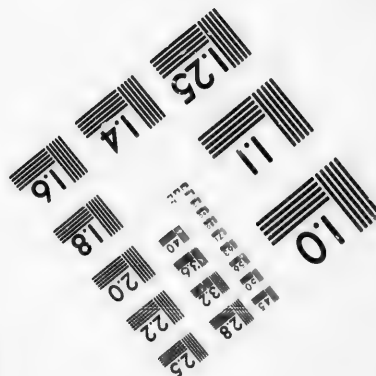
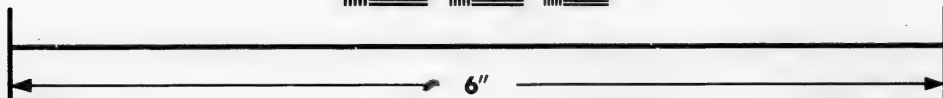
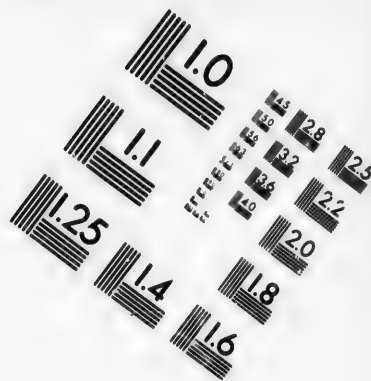
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The Solicitor General said that Randall had come with the intention to have it tried—that he himself had come with that expectation, and only for that cause, and that it would be a vexation to Randall.

He was never retained by Mr. Boulton as his Counsel upon any of the applications made by Mr. Randall to set aside the proceedings in *Boulton vs. Randall*. That either on the application of Mr. Stuart or Mr. Rolph, or both, he did, at the request of the Solicitor General, the grounds of objection which he stated to be against the motion, and perhaps engaged in answering the rule *Nisi*. That the Solicitor General applied to the Attorney General, to oppose the Writ of Error, and he would have done so had he been present. He suggested to the Solicitor General not to object to the legality of the Writ in error, but to allow the irregularities to come into discussion in that shape before the Court, if the Court did not themselves object to it.

To this the Solicitor General assented.

But as the Attorney General then went to England, is not acquainted with the further progress of the matter.

The cause of *Randall vs. Phelps*, was tried at Niagara, in 1819, before Powell, C. J. and a special Jury. Randall in person pleaded his own cause, and not by the Solicitor General, who was not present. He heard Randall, in pleading his own cause, say that he was abandoned by his Counsel, the Solicitor General [Hon. Henry J. Boulton], and has no doubt Mr. Randall appealed to the indulgence of the Court upon matters of law, under the circumstances in which he was placed. The cause was called on at the request of Mr. Randall himself; that he thinks it likely the Judge told him, Randall, that every legal advantage should be afforded to him. The cause went off upon no legal objection; but it went to the Jury on the evidence; the Chief Justice charging strongly in favor of the Defendant.

#### Saturday, 23rd.

The Committee met.

Mr. Randall attended.

Mr. Morris again examined:—

There were but four or five inhabitants in the Township of Nepean at the time of the sale, and these, he thinks, were what are called squatters. The river Goodwood empties into the Rideau ten or twelve miles from the mouth of the Talter; thinks there was not an inhabitant on the river Goodwood nine or ten years ago. Had he never seen any particular Lot on the Rideau below the river Goodwood, which might have been advertised for sale, he would not have given much for it—it is good land, however, and thinks it would now be valuable. At the time spoken of, in 1819, thinks land so situated would have been worth about seven and six pence per acre, though now it is worth five or six dollars—would not have thought eighty acres in that situation a good security for £100; there is no mill seat on the Rideau; on the place spoken of it is dead water.

Mr. Boulton attended, and produced to the Committee a mortgage from Mr. Randall to him, dated March 17, 1817, which is the same referred to in the bond on which judgment was entered. The mortgage is upon Lot No 11, in the first Concession of Nepean, on the Rideau, for £100; to be paid 1st January, 1818. The Lot is said in the mortgage to contain 200 acres. Mr. Boulton produced a certificate from the Surveyor General, that the lot thus mortgaged contains only 78 acres: and that the patent to Mr. Randall described lots Nos. 10 and 11 in the first Concession as containing together only 100 acres, and Mr. Boulton calls the attention

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of the Committee to the circumstance that in the mortgage, Lot No. 11 only was stated to contain 200 acres.

Mr. Boulton also produces an affidavit of Mr. Randall, sworn the 6th July, 1824, for the purpose of his qualification to be returned as a member, in which he describes the Lot in question, No. 11, as a broken Lot, whereas in his petition to the house, he states that he gave Mr. Boulton a mortgage on 200 acres of land. He also produces a certificate given by the Deputy Clerk of the Crown, setting forth various causes conducted to judgment by other Attorneys, viz.:—*Fothergill vs. Brice*; *Somers vs. Petit*; *Heron vs. DeWitt*; *McNider and Forsyth vs. Clarke*; in which the proceedings were precisely such against the Defendants residing out of the Home District as in the case against Mr. Randall.

And he remarks that, in the case of *Mr. Somers vs. Petit*, in which Mr. Baldwin was Plaintiff's Attorney, and judgment by default was obtained in the same manner, he (the Solicitor General) was Counsel for the Defendant, and did all he could to obtain relief against the judgment, but in vain; and the judgment was confirmed.

Mr. Beardsley, a member of the Committee, and also a Barrister and Attorney, states that it is perfectly notorious that the practice was so under the rule of Court, and that he heard many cases where the judgments were so obtained.

Mr. Boulton also produces his dockets, showing that his proceedings for clients in similar cases were precisely such as took place in his action against Mr. Randall.

In particular, he shows a cause in which he was Plaintiff's Attorney for James Samson, Esquire, against the Hon. William Dickson, a Member of the Legislative Council, whose residence in the Town of Niagara was known to every person, in which cause the proceedings were just such as those of which Mr. Randall complains.

Mr. Boulton also produced a writ, certified by the Clerk of the Crown, of judgments against Mr. Randall in other causes which were depending against him at the time he pressed the payment of his bond; among these is a case of *Thomas Clark vs. Robert Randall*, in which judgment was obtained for £415 13s. 0½d. In this case, the Attorney General was concerned for the Plaintiff, and as he states that Mr. Boulton had obtained judgment against Mr. Randall a short time before Mr. Clark's could be entered up—and that he looked into the proceedings with a desire to set them aside if he could, to prevent his obtaining precedence of Mr. Clark, but finding them in accordance with the ordinary practice of the Court, as it appeared to him, he concluded there was no ground.

Mr. *McDonald*, M.P.P., called in, and examined:—

Mr. Boulton related to him that Mr. Randall had informed the Committee, that he (Mr. McDonald) had stated to Mr. Randall, that the advertisement of the Sheriff's sale of Mr. Randall's Lot, was put up with the face to the wall, and on the back written "a watch to be raffled for," and Mr. Boulton asks Mr. McDonald if the fact was so, or if he ever stated such a thing to Mr. Randall.

Mr. McDonald states that he never saw, never heard of, or saw any thing of the kind, and never did state any such thing to Mr. Randall; at least, that he would swear that to the best of his recollection he never made any statement of the sort.

Mr. *Hornor*, M.P.P., called in by Mr. Randall:—

Says that he heard Mr. Randall say, four years ago, that Mr. McDonald had made the statement respecting the advertisement mentioned above; but he never heard Mr. McDonald say so.

Committee met again.

Tuesday, Feb. 26, 1828.

PRESENT:

Mr. Beardsley, Chairman; Messrs. Rolph, and Attorney General.

Mr. Justice *Sherwood* attended at the request of the Committee, and being examined in presence of the Petitioner, states he has been at the Falls on the Ottawa River; knows No. 40 in Nepean; it was sold at Sheriff's sale, at the suit of Mr. H. Boulton; Capt. LeBreton was purchaser at Sheriff's sale; soon afterwards, he thinks within one or two days after, he, Mr. Sherwood, became purchaser from him of part: thinks the sale was in December, 1820. On the evening of the sale, as he thinks, Captain LeBreton came to him at Brockville, and stated, that a valuable Lot was to be sold at Sheriff's sale, situate on the Ottawa, where he, LeBreton, resided; that he wished to become the purchaser, but was not sure he had sufficient money, as other persons he understood had come in, intending to buy, and he proposed to Mr. Sherwood to join him in purchase, or to lend him money to enable him to buy. He stated to Capt. LeBreton, that he was not inclined to buy land at that time, but that he would inquire about the lot in question; that at any rate he would take part of the lot from him if he bought it, or would advance him the purchase money, if he would give him security.

Mr. Sherwood was present at the sale, but did not bid. Captain LeBreton bought it; there were other bids, and thinks lands of other persons were sold on the same day by the Sheriff in presence of the same bidders. Thinks between twenty and thirty persons attended; had seen the Sheriff's advertisement of the sale under Mr. Boulton's execution, before Captain LeBreton came to him, but knew nothing of the particular lot; and a day or two after the sale, he took from LeBreton a conveyance of half his interest in the lot, (an undivided moiety,) and became responsible to the Sheriff for the purchase money of which Captain LeBreton subsequently paid his half to Mr. Sherwood; the amount bid for the lot was £449, to the best of his recollection.

He does not know that any person united with Captain LeBreton in the purchase at Sheriff's sale, but thinks there was not; a partition was made some months after he took the deed from Captain LeBreton, as tenant in common.

Captain LeBreton has sold part of his moiety as he thinks, to one Bellows. He (Mr. S.) has not yet sold any part of his portion, except that he made an exchange with Captain LeBreton of a small part after partition was made.

He has laid out the front of his proportion of the Lot into small lots, and Captain LeBreton, he has been told, has done the same; has never understood what price Captain LeBreton has put upon his share of the land. An application was made to him, from the Quarter Master General's Office, at the desire, as he understood, of the Commander in Chief, for a purchase of a part of the Lot; this was some time after the sale to him; has understood that a proposal was also made to Captain LeBreton, at Quebec, by the Commander in Chief, which, however, did not end in anything satisfactory.

Does not know what price was offered to Captain LeBreton; no specific offer was made to himself.

Considers the Lot valuable from its situation, affording a good landing place at the head of the navigation, and there is a good mill site, and perhaps several, on the Lot; the land is in general rough. There is a Town, he understands, laid out near it, called Bytown, and it is probable that that circumstance renders the Lot of less value than it has been supposed to be. When he was last at the Lot there were two government store-houses built of logs on the Lot, and a small dwelling house near that, kept there as an Inn. Has heard since, that a good house has been built by one Bellows, a Merchant, where he believes an Inn is now kept, and

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there is also another house in which one Hollister lived, who likewise kept an Inn, and has heard that another house has also been built there; one Firth is living with Berry in the house first spoken of.

To questions put by Mr. Boulton, states that he never understood the sale was intended to be kept secret by the Sheriff: has heard the Sheriff say that he sent advertisements to Nepean and Perth, and to several parts of the District: has no idea that the Sheriff was at all aware of the value of the Lot No. 40; he (Mr. S.) knew nothing of it till informed of it by LeBreton.

In 1821, Mr. Randall came to him (Mr. Sherwood,) at York, and spoke to him respecting the sale, saying that he understood the land had been sold, and that he was aware that he, Mr. Sherwood, owned part of it. Mr. Randall appeared to be dissatisfied with the judgment which had been obtained against him, saying that Mr. Boulton had not treated him well; he said that he had no knowledge of the sale till he was told of it during the sitting of the Legislature then in Session, by Mr. Morris or some other person.

At a subsequent Sheriff's sale of Mr. Randall's lands, at the suit of Mr. Clark, he, Mr. Sherwood, bought No. 11, in Nepean, on the Rideau; does not recollect the price; it was, he thinks, under £20, nearer ten than twenty; the quantity of land was somewhere about 60 or 70 acres; had this Lot been offered to him in 1816 or 1817, he would not have given a dollar an acre for it, but it might have been worth much more.

When he understood a question had been made out about the land (No. 40) being properly advertised by the Sheriff, he took pains to inquire; and so far as he can depend on the statement of the Sheriff, his belief is, that the land was as well advertised as Sheriff's sales usually were then, which was before the passing of the Statute on that head in 1822, and more regularly than they sometimes were in other cases: no fact has come to his knowledge to lead him to think otherwise, but the reverse.

*Robert Baldwin*, Esquire, a Barrister and Attorney, attended.—Recollects the rule of Court under which it is stated in the interlocutory judgment in *Boulton vs. Randall* was signed; was a Clerk in his father's office at the time the rule spoken of was caused to be in force; the practice was then agreeable to the rule; whether such practice was consistent with the Statute or not, he could not then judge. Remembers the cause of *Sommers vs. Pettit*, in which his father (W. W. Baldwin, Esquire,) was Attorney for the Plaintiff, and Mr. Boulton for the Defendant: upon reference to his father's docket, he finds that interlocutory judgment was signed under the same rule of Court as in *Boulton vs. Randall*; knows Mr. Boulton exerted himself as much as possible for the Defendant, but the judgment was finally entered on the assessment. That cause was an important one as to value: the judgment was for about £500. The interlocutory judgment in *Sommers and Pettit* was signed 29th July, 1820; demand of plea was put up in the Crown Office on 26th July, and affidavit filed that Defendant's place of residence in the Home District, was not known to the Deponent. Upon questions put to Mr. Boulton by Mr. Randall, Mr. Boulton states, that he was retained by Mr. Randall in *Randall vs. Phelps*, and received five guineas, and that Mr. Justice Boulton claimed £50 for his services rendered to Mr. Randall when he was at the Bar, which formed part of the sum for which the bond was given.

Mr. Randall being asked by Mr. Boulton, whether an account, of which a copy appears published in the Colonial Advocate of June 26, 1825, was not furnished by him to the Printer; and whether he, Mr. Randall, did not receive such an account from Mr. Boulton; he says he has no doubt it is so. Being asked as to the services specified in that account, he does not deny they were rendered, and does not remember whether he ever objected or not to any of the charges made.

Mr. BOULTON to Mr. RANDALL.

YORK, 8th July, 1819.

Sir,—From what has occurred, I suppose you do not wish me to advocate your two causes at the next Assizes: if that is the case, I should wish to know it immediately, as it will save me some trouble. Indeed I am not very anxious to be the advocate of a person who is so very illiberal in his sentiments, because I should expect (from the specimen in your former letter,) that should all my efforts prove of no avail, you would accuse me of not sufficiently exerting myself, and allowing the other side, from improper motives, to obtain undue advantages.

At all events, in order that I may not subject myself in future to the like treatment and similar observations, I shall expect the fee with my brief, to be advanced which will preclude all misunderstandings.

If possible to be procured, you should have the original note upon which the judgment in Mr. Clark's suit was obtained. You had better write to some of your friends in Montreal, to apply to the officer of the Court for it, who perhaps will give it up.

Your obedient Servant,

H. J. BOULTON.

To ROBERT RANDALL, Chippawa.

YORK, May 24th, 1819.

Sir,—I received your most extraordinary letter of the 17th instant, by Mr. Smith, which if there is any meaning at all to be given to it, is a very impertinent one, and such a one as I will not permit you or any other client to write to me with impunity. I would have you to understand, that I am not rendering you any professional assistance from what you may fancy popular reasons, and therefore any further than my duty to my client prompts me, I do not care a farthing about you. You gave me what I expected at the time, to be a security for £100; half for my own benefit, and the other for my father's. This security I find not worth half a dollar per acre, as there are no inhabitants in the Township. In addition to which, I have your note for £25 due on the first of this month, both of which sums, with interest, amount to nearly £140, and the security I have, independent of your personal responsibility, is not sufficient to guarantee the payment of one half that sum: and as I am not looking to the result of your business, as you call it, for my payment, I insist upon having the money, long due to me for my services already performed, paid or secured in a sufficient manner. Were you unable to do either, I should not perhaps expect or wish it, but in proportion as you oppose giving me what I have a right to, so in proportion shall I insist on it, as you can have no honorable or just reason for withholding it. If you will pay me down £50, so as to lessen the burthen upon the land, I will accept it, and let the remainder stand as it does. I return the cognovit for your signature, and patiently wait the return of the post. Mr. Jarvis, I fancy, will hand you this, who will give you a receipt for any money you may pay him. You may be certain I shall not retract one farthing.

Your obedient Servant,

H. J. BOULTON.

Mr. RANDALL, Chippawa.

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CHARLES FOTHERGILL, *vs.* PETER BICE, of the District of Newcastle.

13th July, 1819.—Appearance entered, per Statute 60 Geo. III.

13th July, do.—Affidavit of non-residence of debt fyled with a demand of plea.

17th July, 1819.—Interlocutory Judgment fyled.

GEORGE S. BOULTON,  
for Plaintiff.

ABSALOM SOMMERS *vs.* THOMAS PETTIT.

19th July 1820.—Appearance per Statute, entered by Plaintiff for debt.

26th July, 1820.—Affidavit of non-residence sworn, and demand of plea put up in the office.

29th July, do.—Interlocutory Judgment signed, for want of a plea.

Michælmass Term.—Motion for new trial on payment of costs refused.

Verdict £490.

W. W. BALDWIN,  
for Plaintiff.

HERON *vs.* DEWITT.

10th January, 1820.—Appearance per Statute.

25th January, do.—Demand of plea put up in the office.

Affidavit of non-residence allowed in bill of costs.

31st January, do.—Interlocutory Judgment signed.

Notice of Assessment of Damages put up in the office.

W. W. BALDWIN,  
for said Plaintiff.

ADAM L. McNIDER and JOHN FORSYTH *vs.* JOHN CLARK, do. debt on bond, £150.

JOHN B. ROBINSON,  
for Plaintiff.

16th January, 1821.—Appearance per Statute.

22nd January, do.—Interlocutory Judgment upon an affidavit of non-residence, and demand of plea, as appears by the bill of costs.

24th March, 1821.—Final Judgment signed without any rule to refer bond to the master or assessment of damages.

I certify the above proceedings to be correct, as appears by the papers now in the Crown Office.

JAMES E. SMALL,  
Deputy Clerk of the Crown.

I certify that the broken Lots, Nos. 10 and 11, in the 1st Concession on the River Rideau, in the Township of Nepean, were given in the grant to Robert Randall, Esquire, containing 100 acres. By the plan, they appear to contain

somewhat more, that is to say, the broken Lot, No. 10, about 50, and the broken Lot No. 11, about 78 acres.

THOMAS RIDOUT,  
Surveyor General.

Surveyor General's Office, York, 14th February, 1828.

TO WHOM IT MAY CONCERN.

I, Robert Randall, of the Township of Stamford, do swear that I truly and *bonâ fide* have such a freehold estate situated in the following places:—the place known by the Bridgewater Works in the waters of the Niagara River, between the mouth of the River Welland and the Great Falls in the Township of Stamford, District of Niagara; four frame dwelling houses, under two stories, with not more than two fire places; twelve hundred acres of land, being the North part of the Lots Nos. 15, 16, 17, 18, 19, and 20 on the South side of the River Welland, in the Township of Wainfleet, District of Niagara; compensation allowance for the destruction of the Bridgewater Works in the late war with the United States of America, detained in the hands of this Government by my order, (four thousand pounds); seven hundred and twenty six acres of land, Lots Nos. 38, 39, and 40, in the first Concession from the Grand or Ottawa River, and the broken fronts of said Lots, in the Township of Nepean, in the County of Carleton, District of Bathurst; 450 acres of land, broken Lots Nos. 10 and 11 in the 1st Concession; Lot No. 11, and the easternmost or front three-fourths of Lot No. 10, in the 2nd Concession, upon the River Rideau, Township of Nepean, County of Carleton, District of Bathurst; 400 acres of land, Lots Nos. 11 and 12, in the 8th Concession of the Township of Matilda in the County of Dundas, Eastern District; 400 acres of Land, Lots Nos. 10 and 11, in the 6th Concession of the Township of Young, County of Leeds, District of Johnstown, over and above all incumbrances that may effect the same; and am otherwise qualified according to the provisions of the law to be elected and returned a Member of the Commons House of Assembly, according to the tenor and true meaning of the Act of Parliament in that behalf; and that I have not obtained the same fraudulently for the purpose of enabling me to be returned Member to the Commons House of Assembly. So help me God.

(Signed), ROBERT RANDALL.

Sworn before me, at Stamford,  
in the County of Lincoln, in the District of Niagara,  
this 26th day of July, 1824.

(Signed), RICHARD LEONARD,  
Returning Officer, District of Niagara.

I, Richard Leonard, Esq., Returning Officer for the County of Lincoln, in the District aforesaid, do certify, that on the 26th day of July inst., Robert Randall, of the Township of Stamford, did duly make and subscribe before me, Returning Officer as aforesaid, the within written oath of eligibility.

Given under my hand, at Stamford,  
31st day of July, 1824.

(Signed), RICHARD LEONARD,  
Returning Officer.

I certify that the foregoing are true copies of the oath of eligibility of Robert

Randall, Esq.,  
Officer, now

In testimony  
this 8th day

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Randall, Esq., and of the certificate of Richard Leonard, Esq., the Returning Officer, now fyled of record in the Crown Office.

In testimony whereof, I have hereto set my hand and affixed my seal of office, this 8th day of February, in the year of our Lord, 1828.

JAMES E. SMALL,

Deputy Clerk of the Crown.

Know all men, by these presents, that I, Robert Randall, of the Township of Stamford, in the District of Niagara, gentleman, am held and firmly bound to Henry John Boulton, of the Town of York, in the Home District, Esq., in two hundred pounds of lawful money of Upper Canada, to be paid to the said Henry John Boulton, or his certain Attorneys, executors, administrators or assigns, for which payment, to be well and truly made, I bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal, and dated the 7th day of July, in the year of our Lord, one thousand eight hundred and eighteen.

Whereas, by an indenture bearing date the 17th March, 1817, the said Robert Randall, mortgaged unto the said Henry John Boulton, all that parcel or tract of land, situated, lying and being in the Township of Nepean, in the District of Johnstown, containing, by admeasurement, 200 acres, more or less, being Lot number 11, in the 1st Concession, (on the Rideau) of the said Township of Nepean which is more particularly described in the original grant from the Crown, of the said parcel or tract of land, to the said Robert Randall, and which said indenture of mortgage is meant as a security for the due payment of the sum of £100 of lawful money of Upper Canada, by the said Robert Randall, to the said Henry John Boulton, with lawful interest from the date hereof, and, whereas in the said indenture of mortgage, there is not contained any covenant for the due payment of the said sum of £100, as aforesaid, according to the true intent and meaning of the said parties, now the condition of this obligation is such, that if the above bounden Robert Randall, his heirs, executors, or administrators, do and shall, well and truly, pay or cause to be paid unto the above named Henry John Boulton, his heirs, executors, or administrators, the full sum of £100, of lawful money aforesaid, with lawful interest for the same, from the 17th March, 1817, on the 1st day of January, next ensuing the date of the above written obligation, then this obligation shall be void, otherwise the same shall remain in full force.

ROBERT RANDALL.

Sealed and delivered in the presence of

JAMES BOULTON.

G. S. BOULTON.

[Copy of the Promissory Note.]

For value received I promise to pay Henry John Boulton, Esq., or order, the sum of twenty-five pounds, seventeenth October, 1818—payable 1st May next,

R. RANDALL.

I certify that the preceding paper writing contains true copies of a bond and a promissory note, fyled of record in the Crown Office, in the cause of Henry J. Boulton, Esquire, against Robert Randall.

In testimony whereof, I have hereto set my Hand and affixed my Seal of Office, this seventh day of February, 1828.

JAMES. E. SMALL,  
Deputy Clerk of the Crown.

No. 8.

A list of property on which Robert Randall declares his eligibility as a Candidate to be returned to the Commons House of Assembly as a Representative :—

The place known as Bridgewater Works, on the waters of the Niagara River, between the mouth of the River Welland and the great Falls, in the Township of Stamford, district of Niagara.

4 Frame dwelling houses, under two stories, with not more than two fire-places each £35..... £ 140

1,200 acres of land, being the North part of the Lots, Numbers, 15, 16, 17, 18, 19 and 20, on the South side of the River Welland, in the Township of Wainfleet, District of Niagara..... 240

Compensation allowed for the destruction of the Bridgewater Works in the late War with the United States of America, detained in the hands of this Government, by my order..... 4,000

776 acres of land, Lots No. 38, 39, and 40, in the 1st Concession, from the Grand or Ottawa River, and the broken fronts of said Lots in the Township of Nepean, County of Carleton, District of Bathurst..... 155

450 acres of land, broken Lots, No. 10 and 11, 1st Concession Lot No. 11, and the Easternmost or front three-fourths of Lot No. 10, in the second concession upon the River Rideau, Township of Nepean, County of Carleton, District of Bathurst..... 90

400 acres of land, Lots No. 11 and 12, in the eighth Concession of the Township of Matilda, County of Dundas, Eastern District..... 80

400 acres of land, Lots No. 10 and 11, sixth Concession of the Township of Yonge, County of Leeds, District of Johnstown..... 80

Total, 3226 acres assessable property—amount of rates, ..... £786

ROBERT RANDALL.

Chippawa, July 26, 1824.

I certify that the paper writing marked No. 1, hereto annexed, is a correct statement of the proceedings in the cause wherein Henry John Boulton, Esquire, is Plaintiff, and Robert Randall, Esquire, is Defendant; and also that the paper writing marked No. 2, also hereto annexed, contains true copies of the appearance paper, affidavit of non-residence, and demand of plea—and the interlocutory judgment paper, with their several indorsements filed of record in the Crown Office in the abovesaid cause.

In testimony whereof, I have hereto set my Hand and affixed my Seal of Office, this first day of August, in the Year of our Lord one thousand eight hundred and twenty-eight.

JAMES E. SMALL, [G. R.]  
Deputy Clerk of the Crown.

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## No. 1.

## IN THE KING'S BENCH.

HENRY JOHN BOULTON, Plaintiff.

vs.

ROBERT RANDALL, Defendant.

THIS action was commenced by a Writ of Summons in a plea of debt, issued from the Crown Office at York, in the Home District, on the 31st day of May, 1819, returnable the first day of Trinity Term, 1819, being the fifth day of July of that year. This summons, with the declaration annexed, was fyled in the said Crown Office on the 13th day of July, 1819, with an affidavit made by Samuel P. Jarvis, before Thomas Dickson, on the 24th day of June, 1819, stating that the same was served on the Defendant by the Deponent, on the 22nd day of June, of the same year. On the said 13th day of June, 1819, an appearance for said Defendant in said cause was entered in said office by said Plaintiff, and on the same day an affidavit made, on the 13th day of July, 1819, before John Small, Clerk of the Crown, by the present Honorable James B. Macaulay, then a student at law with the said Henry John Boulton, stating that the place of residence of the Defendant, in the Home District, was unknown to the Deponent, and also a demand of plea were fyled in the Crown Office. On the 17th day of July, 1819, interlocutory judgment was signed, and final judgment entered for two hundred and twenty-five pounds debt, and five pounds three shillings and eight pence damages and costs, amounting altogether to the sum of two hundred and thirty pounds. On the fifth of October, 1819, a Writ of *feri facias*, against the goods and chattles of the Defendant was issued upon a *præcipe* fyled by the Plaintiff, directed to the Sheriff of the Home District, returnable on the first day of Michaelmas Term following, being the first day of November, 1819. This execution, with a return of *nulla bona*, by the Sheriff of the Home District, was fyled in the said Crown Office on the return day, and on the same day a Writ of *feri facias* against the Defendant's lands and tenements was issued, (upon a *præcipe* fyled by the Plaintiff,) directed to the sheriff of the Johnstown District, and returnable the last day of Michaelmas Term, 1820, which Writ was fyled in the said office, on the 17th day of March, 1825, with the following return by the Sheriff of the Johnstown District:—

By virtue of the Writ to me directed, I have caused to be made by the public sale of the lands and tenements of the within named Defendant, Robert Randall, that is to say, Lot number forty, in the first Concession of Nepean, in the Johnstown District, together with its broken front, in front thereof, on the Ottawa or Grand River, the debt and damages therein mentioned, which I have ready before the Lord the King, to be rendered to the said Henry John Boulton, for his debt and damages aforesaid, as within I am commanded.

(Signed,)

JOHN STUART,  
Sheriff, District of Johnstown.

## No. 2.

IN THE KING'S BENCH.—Trinity, 59 Geo. III.

HENRY J. BOULTON one, &amp;c., vs. ROBERT RANDALL.

The Plaintiff appears for the Defendant in this case according to the Statute.

H. J. BOULTON, In person.

INDORSED on the above.—In B. R.—BOULTON, vs. RANDALL.

Appeared.—Fyled 13th July, 1819.

J. SMALL, C. C.  
H. J. BOULTON

IN THE KING'S BENCH.—Trinity Term, 59, Geo. III.

H. J. BOULTON, one, &c., *vs.* ROBERT RANDALL.

The Plaintiff demands a plea in the cause from the Defendant by

Yours, &c.,

H. J. BOULTON,  
Plaintiff in person.

—  
To ROBERT RANDALL, the above Defendant.

James B. Macaulay, of the Town of York, gentleman, maketh oath and saith, that the above named Defendant, Robert Randall's place of residence, in the Home District, is not known to this Deponent.

J. B. MACAULAY.

Sworn before me this 13th day of July, 1819.

J. SMALL,  
Clerk of the Crown.

Entered 13th July, 1819.

J. SMALL.

—  
INDORSEMENT on the above.—H. J. BOULTON, *vs.* ROBERT RANDALL.  
Affidavit of non-residence and demand of plea fyled 13th July, 1819.

J. SMALL, C. C.  
H. J. BOULTON.

IN THE KING'S BENCH.—Trinity Term, 59 Geo. III.

HENRY JOHN BOULTON, *vs.* ROBERT RANDALL.

The Plaintiff signs Judgment in this cause by default for want of a plea.

H. J. BOULTON, Plaintiff.

17th July, 1819.

—  
INDORSED on above.—In B. R.—Trinity Term, 59, Geo. III.

H. J. BOULTON, *vs.* ROBERT RANDALL.

Interlocutory Judgment, fyled 17th July, 1819.

J. SMALL, C. C.  
H. J. BOULTON,  
Plaintiff in person.

—  
No. 10.

Upper Canada, } GEORGE THE THIRD, by the grace of God, of the United  
Home District. } Kingdom of Great Britain and Ireland, King, Defender of  
To wit: } the Faith.

(L.S.)

To the Sheriff of the Home District,

GREETING :

We command you that you cause to be levied of the goods and chattels in your District, of Robert Randall, as well a certain debt of two hundred and twenty-five pounds, which Henry John Boulton, lately in our Court before us at York, re-

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covered against him, as also five pounds three shillings and eight pence, which in our same Court before us were awarded to the said Henry John Boulton, for his damages, which he had sustained, as well by occasion of the detaining the said debt, as for his costs and charges by him laid out about his suit on that behalf, whereof the said Robert Randall convicted as appears to us of record, and have you that money before us at York, on the first day of Michaelmas Term next, to render to the said Henry John Boulton, for his debt and damages aforesaid, and have there and then this Writ. Witness the Honorable William Dummer Powell, C.J., the seventeenth day of July, in the fifty-ninth year of our Reign.

JOHN SMALL,  
Clerk of the Crown.

H. J. BOULTON.—In person.

INDORSEMENT on the above.—H. J. BOULTON vs. ROBERT RANDALL, *Fi. Fa.*—  
*Nulla Bona.*—The answer of

SAMUEL RIDOUT,  
Sheriff.

Return and fyled 1st Nov. 1819.

J. SMALL, C.C.

Upper Canada,  
Home District, &c.

{ GEORGE THE THIRD, by the grace of God, of the  
United Kingdom of Great Britain and Ireland, King,  
Defender of the Faith.

(L.S.)

To the Sheriff of the Johnstown District,

GREETING :

Whereas we lately commanded our Sheriff of the Home District, that of the goods and chattels of Robert Randall, in his District, he should cause to be made as well a certain debt of two hundred and twenty-five pounds which Henry John Boulton, lately in our Court before us at York, recovered against him, as also five pounds three shillings and eight pence which in our said Court before us, were awarded to the said Henry John Boulton for his damages which he had sustained, as well by occasion of the detaining of the said debt, as for his costs and charges by him laid out about his suit in that behalf, whereof the said Robert Randall was convicted as appeared to us of record, and that he should have that money before us at York, on the first day of Michaelmas Term then next, to render to the said Henry John Boulton for his debt and damages aforesaid. And that he should have then there that writ: And our said Sheriff of the Home District at that day returned to us, that the said Robert Randall had not any goods or chattels in his District whereof he could cause to be made the debt and damages aforesaid, or any part thereof, whereupon, on the behalf of the said Henry John Boulton, it is sufficiently testified in our said Court before us that the said Robert Randall hath sufficient lands and tenements in your District whereof you may cause to be made the debt and damages aforesaid and every part thereof, therefore we command you that of the lands and tenements of the said Robert Randall in your District, you cause to be made the said debt of two hundred and twenty-five pounds and the said five pounds three shillings and eight pence the damages aforesaid, and that you have that money before us at York on the last return day of Michaelmas Term next, to render to the said Henry John Boulton for his debt and damages aforesaid, and have then there this writ.

Witness the Honorable William Dummer Powell, Chief Justice, at York, this first day of November in the Sixtieth Year of our Reign.

JOHN SMALL,  
Clerk of the Crown.

H. J. BOULTON.—In person.

INDORSEMENTS on the above.—By virtue of this writ to me directed, I have caused to be made by the public sale of the lands and tenements of the within named Defendant, Robert Randall, that it is to say, Lot number forty in the first concession of Nepean, in the Johnstown District, together with the broken front thereof on the Ottawa or Grand River, the debt and damages within mentioned, which I have ready before the Lord the King to be rendered to the said Henry John Boulton for his debt and damages aforesaid, as within I am commanded.

JOHN STUART, Sheriff,  
District of Johnstown.

Levy one hundred and fifty-five pounds six shillings and four pence, together with execution, Sheriff's poundage, and all other expenses.

£155 6 4  
*Fi. Fa.* 0 18 6

H. J. BOULTON, Plaintiff.

£156 4 10

Received the amount of the within *fi. fa.* and my fees in full.

JOHN STUART, Sheriff,  
District Johnstown.

BOULTON vs. RANDALL—*fi. fa.*—Lands and Tenements, fyled and returned, 17th March, 1825.

J. SMALL, C.C.

Received the 13th November, 1819.

JOHN STUART, Sheriff, Johnstown District.

2 Deeds .....	£2 6 8
Poundage .....	3 4 0
Returning Writ .....	0 3 8
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I certify that the foregoing are true copies of the *fieri facias* against the goods and chattels of Robert Randall, Esquire, and also of the *fieri facias* against the lands and tenements of the said Robert Randall, Esquire, with the several indorsements thereon, at the suit of Henry John Boulton, now filed of record in the Crown Office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, the ninth day of August, one thousand eight hundred and twenty-eight, and in the ninth year of His Majesty's Reign.

CHARLES C. SMALL, [G.R.]

Sheriff's  
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## No. 11.

Sheriff's return on a writ of *fi. fa.* against the lands of Robert Randall, Esquire, at the suit of Thomas Clark.

Issued 15th February, 1821.—Returned and fyled in the Crown Office, 17th March, 1825.

By virtue of the within writ, I seized and took into my hands and possession on the first day of April, 1821, the lands and tenements of the within named Robert Randall, in Nepean and Yonge, in the District of Johnstown, and have exposed a part of that to public sale, and have sold a part thereof at such sale to the value of £32 10s., and the residue of said lands and tenements still remain in my hands for want of buyers.

JOHN STUART, Sheriff,

District Johnstown.

Levy indorsed on writ, £484 4s. 10d., besides Sheriff's fees, &c.

Sheriff's return on a writ of *fi. fa.* against the lands of Robert Randall, Esquire, at the suit of Thomas Clark, Esquire, issued 17th January, 1830, and fyled in the Crown Office, 7th September, 1825.

By virtue of the writ hereunto annexed, I have caused to be made of the lands and tenements of the within named Robert Randall, the sum of thirty-three pounds eleven shillings and four pence, which money I have ready before the Lord the King at the day and place within contained, to render to the within named Thomas Clark, in part of his damage within mentioned, and I further certify that the said Robert Randall has not any other or more lands and tenements in my District, whereof I can cause to be made the residue of the damages aforesaid.

The answer of

RICHARD LEONARD, Sheriff.

PETER T. PAWLING, Deputy Sheriff.

## No. 48.

Bill No. 1, passed in Assembly for Randall's Relief.

The Committee also reported the following Bill, appointing the Hon. John Walpole Willis, then a Judge of the King's Bench, Chancellor, to afford relief to Mr. Randall from the injustice thus done him.

## BILL.

“**W**HERAS Robert Randall has, by petition, complained that he has suffered great loss and injustice under a judgment obtained against him in the Court of King's Bench, in this Province, by Henry John Boulton, Esquire, His Majesty's Solicitor General, which judgment the Petitioner alleges was obtained against the rules of law and equity; and whereas adequate relief cannot be afforded by the said Court of King's Bench, and it is therefore expedient that an inquiry should be made into the wrongs alleged, and right be caused to be done, if, upon due inquiry, under oath, it shall be made to appear that such great injustice has been done: Be it therefore enacted, by the King's Most Excellent Majesty, &c., That

" it shall and may be lawful for the Hon. John Walpole Willis, one of His Majesty's Justices of the Court of King's Bench, in and for the Province of Upper Canada, under and by virtue of this Act, at York, in the Home District, to inquire into the truth of the statements in the said Petition set forth, and for the purpose of that inquiry it shall and may be lawful for the said Hon. John Walpole Willis; in the presence of the parties or their Attorneys, or such of them as shall, after due notice, appear, to summon and examine, upon oath, all witnesses deemed necessary for the attainment of justice between the parties, and to enable the said Hon. John Walpole Willis to inform his judgment in making his decree or decrees as hereinafter mentioned; and any person convicted of wilful false swearing before the said Hon. John Walpole Willis, under this Act, shall be liable to the same punishment as is now inflicted by the laws of the Province upon persons guilty of perjury.

" And be it, &c., That the aforesaid matter shall be heard and determined and the witnesses examined in an open Court whereunto all His Majesty's subjects shall have free access: Provided always, that it shall and may be lawful for the said Hon. John Walpole Willis to commit any person for a contempt of the Court for a period not exceeding one month, and to fine such person a sum not exceeding fifty pounds.

" And be it, &c., That it shall and may be lawful for the said Hon. John Walpole Willis, having heard the said Petitioner, and the said Henry John Boulton, and such other persons as he the said Hon. John Walpole Willis shall summon, or such of them as shall appear after due notice, to make such decree or decrees for either the confirmation or the reversal of the said judgment, and of the proceedings thereupon, and of any rules of law heretofore made under and by virtue of the said judgment, as he the said Hon. John Walpole Willis shall deem necessary for the doing of justice between all parties interested in the matter.

" And be it, &c., That any decree made by the said Hon. John Walpole Willis, under and by virtue of this Act, shall be obligatory and binding upon the person against whom or in whose favour the same shall be made; and if any person against whom or in whose favour any decree shall be made, shall neglect or refuse to comply therewith, it shall and may be lawful for any person interested in such decree to have the same registered, which decree, so registered, shall have the same virtue and effect as if the said decree had been literally obeyed.

" And be it, &c., That every decree made by the said Hon. John Walpole Willis, shall be under his hand and seal, attested by two witnesses, and made on or before the first day of January, one thousand eight hundred and twenty-nine.

" And be it, &c., That upon the production of any decree aforesaid, and a copy thereof, to the Register of any County or Riding in this Province, in whose County or Riding the land in the said decree mentioned shall lie, and upon an affidavit made before such Register, or his Deputy, or any Commissioner of the King's Bench for taking affidavits, of the due execution of the said decree or decrees before such Register, it shall and may be lawful for him to register the said decree in his office, and to file the copy thereof, and for such registry and filing to demand and receive the sum of one pound.

" And be it, &c., That it shall and may be lawful for the said Hon. John Walpole Willis to award against either of the parties, such costs and charges as he shall deem right and just; for the recovery of which costs and charges, so awarded, it shall and may be lawful for the party interested to proceed by action of debt in any Court of record in this Province."

The above Bill passed the Legislative Assembly, but the Legislative Council, as then constituted, refused either to amend or pass it—they threw it out.

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## No. 49.

Chief Justice Robinson to Mr. Randall.—Was defending Randall's Title against Sherwood's Action of Ejectment.

[From Appendix to Assembly's Journals, U.C., 1886.]

YORK, 19th July, 1828.

Sir,—An action of ejectment is brought by Mr. Sherwood against one Firth, who is in possession of part of the Lot at Point Nepean, on the Ottawa River, which you complain has been illegally sold under an execution against you. I am defending the action, and have instructed Mr. Radenhurst of Perth, to manage the defence at the trial. If the sale was illegal, for any cause stated by you, and more particularly for want of being fairly advertised, you have now an opportunity to take the opinion of the Court upon it, by enabling Firth to urge that objection against the Plaintiff's title.

The Assizes for Perth commence on the 18th August. Any evidence you can furnish on the subject, or any professional assistance which you may desire to engage, Mr. Radenhurst will willingly avail himself of.

I am, Sir,

Your obedient servant,

JOHN B. ROBINSON.

ROBERT RANDALL, Esquire.

## No. 50.

Mr. Radenhurst to Mr. Randall.—Ejectment suit before Judge Hagerman.

[See Journals of Assembly, U.C.—Appendix, 1886.]

PERTH, 23rd August, 1828.

ROBERT RANDALL, Esquire.

Dear Sir,—I received your several letters with the documents enclosed, respecting the suit of *Doe ex dem* Sherwood *vs.* Firth and Berrie, for part of the land formerly your property at Nepean Point. Many of the papers you sent were entirely useless, as the Judge would not permit evidence to shew how the judgment in Boulton's suit was obtained. Nor could I, in addressing the Jury (as you wished,) allude to that circumstance, but was entirely confined to what was put in evidence by the Plaintiff, viz: the judgment, executions and sale, and even in this I was once or twice interrupted by the opposite Counsel, and censured by the Court for what they considered exceeding my bounds.

I objected, as you requested I should, to the trial proceeding at all, which the Judge paid no attention to, as he considered it was casting a censure on the conduct of the Court of King's Bench, which he could not listen to. The Plaintiff did not produce any notice of the sale whatever, nor show that any such was given previous to the sale taking place. Upon this and some other points, I moved for a non-suit, and the Judge reserved the points. We were also anxious to shew that Colonel By required the property for the Government use, for the purposes of the Rideau Canal; this evidence the Judge refused receiving. In fact, he seemed unwilling that any point that could operate in your's or the tenants' favour should go to the Jury; and as the jury at that Assize were persons little acquainted with their

duty or with Courts of Law, they implicitly followed the directions of the Court which in this case was for the Plaintiff, and gave a verdict accordingly.

I remain, your obedient Servant,

THOS. RADENHURST.

## No. 51.

The Governor General to Mrs. Firth.—Lots 39 and 40, Sherwood's claim.

(Copy.)

Governor in Chief the Earl Dalhousie, to Mrs. Isaac Firth, relative to the Lots 39 and 40, Nepean, on the Ottawa.

"TO MRS. FIRTH."

(Copy.)

"At the desire of Mrs. Firth, at the Richmond Landing, near Bytown, I give her this note to certify, that, several years ago, I gave her and her husband, leave to establish themselves in a small house and store belonging to government at that place: it was originally placed there by the Duke of Richmond, to aid the passage of Emigrants, Military Settlers. Being no longer useful it fell to ruin, and in these circumstances these persons repaired it, and have been permitted to occupy it. I have been led to believe that it stands on the line of Government property, and a Clergy Reserve set aside by Sir P. Maitland for the service of Government. That Lot of Government property, being a broken front not included in Randall's Lot, has been claimed by Mr. Sherwood. I am convinced that he has no fair claim, nor legal right to it; and on the part of Government I have maintained the Firths in their possession, and I think they ought to be maintained in it against the pretensions set up by LeBreton and Mr. Sherwood.

"DALHOUSIE.

"Quebec, 8th August, 1828.

[NOTE.—Mr. Randall appealed to the Court of King's Bench, in banc, questioning the judgment of Mr. Hagerman at Perth, and there sat Mr. Hagerman, alone, the whole Court, and confirmed his own judgment below, the chief Judge being in London after a pension; his coadjutor, Willis, suspended from his functions; and the third Judge, Sherwood, a party in the cause.]

## No. 52.

Mr. Justice Willis to the Secretary of State for the Colonies.

BATH, [England,] September, 23rd 1828.

"It is evident that no Judge of the Court of King's Bench in Upper Canada can sue or be sued in that Court, while he is personally discharging his judicial functions, as he would be unlawfully Judge in his own cause. The difficulty contemplated by Mr. Sherwood, as arising from the Act being construed to insist upon the presence of all the three Judges, would be increased rather than obviated by a less strict interpretation of the law permitting the competency of the Bench when composed of less than three members. For example: in the action of Ejectment brought by Mr. Justice Sherwood himself, for land at Brockville,

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"arising out of the notorious cause of Mr. Solicitor Boulton *vs.* Randall; (see the proceedings of the Provincial Parliament in this case;) should the action have been tried at the last Assizes by Mr. Hagerman, now acting as a Judge of the Court of King's Bench, and for any misdirection or impropriety on his part at the trial at *Nisi Prius*, a new trial be moved for, who is to decide? Surely, Mr. Justice Sherwood (if a Judge) cannot, because he is a party; and Mr. Hagerman ought not, because his own judgement is called in question. In such a case—a case probably at this moment pending—the construction of the Act contended for by Mr. J. Sherwood would, so far from obviating difficulties, increase them tenfold; and place beyond the possibility of doubt the wisdom of the Legislature in providing that a Chief Justice, together with two Puisne Justices, should preside in the said Court. There always should and must be three Judges present, a Chief and two Puisne Judges, to act legally in the Court of King's Bench in Upper Canada. If any one of them be a party in a cause, the only inconvenience thereby arising is, that until the obvious course I have mentioned be taken, the Court cannot proceed in that cause."—[*Extract from Letter.*]

### No. 53.

Ejectment Suit, 1828.—[*Extract from Mr. Randall's Letter of Instructions to Mr. Firth.*]

Mr. RANDALL thus instructed FIRTH:—

"You will perceive that I have instructed Mr. Radenhurst to urge the illegality of the Court, as now constituted—the want of sufficient notice to purchasers, and on this last head you will do well to bring forward all the proof possible, particularly Mr. Wright, of Hull, as it is a strong point—the injustice of the proceedings here—the manner of obtaining the judgment—the view taken of the subject by the House of Assembly, as may be seen by the bill which passed that House. Mr. (William) Morris, the Member for your District, though he did not agree to the bill, bore testimony to the irregularity of the proceedings, and said that if a bill had been brought in to refer the whole case to the Court of King's Bench, he would (under the circumstances) have given it the sanction of his vote. You can prove to the Court that one acre, if the property had been duly advertised, would have paid Mr. Boulton's pretended claim, for which the 276 acres were unjustly sold. \* \* \* \* The Hon. J. B. Macaulay, engaged for Sherwood, was the person that swore he did not know my residence in the Home District, although he knew I lived in the Niagara District and not in the Home District."

### No. 54.

Captain LeBreton's Estimate of the value of Lot 40, Nepean.

TOWN OF SHERWOOD.

In consequence of the decision of the Court of King's Bench, held at Perth, on the 20th instant, proving the subscriber's indisputable title to that valuable tract of land, in the Township of Nepean, formerly known by the name of the Richmond Landing (at present the Town of Sherwood) and adjoining to Bytown. Reports, prejudicial to the title of said land, having been maliciously circulated by a personage of high rank and responsibility, have heretofore prevented the subscriber

from disposing of said land. The situation is most beautiful and salubrious, being on the south side of the Chaudière Falls, with the Grand Union Bridge abutting on the centre of the front and leading through the main street. It is replete with mill sites, and for commerce no situation on the River Ottawa can equal it. The subscriber is determined as much as possible to confine his sales to persons of respectability.

JOHN LeBRETON.

Britannia, Ottawa River, 26th August, 1828.

#### UNION HOTEL, CHAUDIERE, UPPER TOWN.

Firth and Berrie beg to make their most grateful acknowledgments for the very liberal patronage and support they have received from their friends and the public, for the long period of nine years, of which it will be their earnest study to merit a continuation, by contributing to the utmost of their means and power, to the comfort and accommodation of those who favor them with their countenance and support.

The romantic and highly picturesque situation of the Union Hotel, which commands a most interesting view of the mountains and scenery in the vicinity of Hull—the islands and banks of the noble Ottawa—the magnificent Falls of the Chaudière, over which bridges are now about completed; and the works and improvements in Upper Bytown will render this place a delightful retreat either to the delicate, invalid, or scientific tourist.

The accommodations will be of a superior kind; the table will be furnished with the choicest viands that the season and the situation of the country will afford, and the wines and liquors will be of the best quality that can be procured, either at Bytown or from the most respectable dealers in Montreal.

Bytown, 1st September, 1828.

### No. 55.

Unjust Conduct of the Upper Canada Judges.—Cruel Treatment of Robert Randall.—Removal of Mr. Justice Willis.—Address of the House of Assembly of Upper Canada laid before the House of Commons, England.

UPPER CANADA—ADMINISTRATION OF JUSTICE.

[From the Journals of the House of Commons, July 31, 1832—3 William IV, vol. 87, page 541.]

#### ADDRESS RESPECTING UPPER CANADA.

"Resolved, That an humble Address be presented to His Majesty, that He will be graciously pleased to give directions, that there be laid before this House, a copy of an Address to His Majesty, from the House of Assembly of Upper Canada, on the Administration of Justice, dated 14th March, 1829, which Address that House humbly prayed His Majesty to lay before the House of Commons of Great Britain and Ireland."

"Ordered, That the said Address be presented to His Majesty by such Members of this House as are of His Majesty's most Honorable Privy Council."

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[From same volume, page 554, August 3.]

ANSWER TO THE ADDRESS.

"Lord Viscount Althorp reported to the House, that their Address of the 31st day of July last, had been presented to His Majesty; and that His Majesty had commanded him to acquaint this House, that he will give directions accordingly."

[From same volume, page 589, August 16th.]

"Mr. Rice presented"—"Return to an Address to His Majesty, dated 31st July last, for copy of an Address to His Majesty, from the House of Assembly of Upper Canada, on the Administration of Justice, dated 14 March, 1829."

"Ordered, That the said papers do lie upon the table; and be printed."

[From the Sessions' Papers of the House of Commons, 1831-32, No. 740.]

Return to an Address to His Majesty, dated 31st July, 1832, for copy of an Address, &c.

(Signed,)

R. W. HAY.

Colonial Department, Downing Street.  
15TH AUGUST, 1832.

(MR. HUME.)

UPPER CANADA.

[From Journals of the House of Assembly of Upper Canada, 1829.]

Copy of an Address to His MAJESTY, from the House of Assembly of Upper Canada, dated 14th March, 1829.

TO THE KING'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN,

We, Your Majesty's dutiful and loyal Subjects, the Commons of Upper Canada, in Provincial Parliament assembled, humbly request Your Royal attention to the dependent and very unsatisfactory state of the Judiciary in this Country; and we further pray that our earnest wishes and solicitude expressed in this Address to Your Majesty, may in our behalf be laid before Your Majesty's faithful Commons in Imperial Parliament assembled.

In former Sessions of the Provincial Legislature, we pressed this painful and now alarming subject upon Your Royal consideration, representing the expediency of exempting the Chief Justice in this Province from the duties imposed upon him in the Executive Council, and of rendering the Judges independent of the Crown and of the people.

During the present Session, we have received from His Excellency the Lieutenant Governor, a Message, from which it appears, that on the subject of the Judges being commissioned to hold office during good behaviour, Your Majesty's Government find there are many difficulties to which, it is apprehended, this House may not have adverted, and that it is with a view solely to the welfare of the Province, and to the impartial Administration of Justice, that Your Majesty's Government hesitate to remove from the Judges in this Province their direct responsibility to the Crown.

Upon so important a subject, involving the interests, the rights, the liberties, and the very lives of the people of this Province, it becomes us with earnestness to repeat our humble remonstrances against the present state of things.

We regard with grateful recollection the memorable declaration of His late Most Gracious Majesty from the Throne, "that he looked upon the independence and "uprightness of the Judges as essential to the impartial administration of Justice, "as one of the best securities of the rights and liberties of his Subjects, and as most "conducive to the honor of the Crown." In this respect we rejoice at the unparalleled happiness of the people of England; we cannot, however, but feel that as a portion of Your Majesty's free and glorious Empire, we also are equally interested and entitled to have justice administered amongst us by independent Judges, equally able to appreciate the value of so great a blessing, and disposed with constitutional jealousy to watch over the judicial character, to preserve it unsullied by unjust reproach, and unawed by the vindictive exercise of the Royal Prerogative by the Provincial Authorities.

In this Province, it is exceedingly desirable and even necessary that the Court of King's Bench should, for many years to come, be wholly composed of Judges selected from the English Bar; Judges who would in that case be as free as possible from the entanglements of family connexions, the influence of local jealousies, and the contamination of provincial politics: without such a change, Justice never can in this Country be administered with purity, or rise above suspicion.

We duly value the assurance of Your Majesty, conveyed in the Message of His Excellency, "that the direct responsibility of our Judges to the Crown is enforced by Your Majesty only on the most serious occasions, and never in respect "to any act which can be properly considered judicial." But although Your Majesty is thus graciously pleased to declare, that your Majesty, in the exercise of Your Royal Prerogative, will be governed by a maxim so consonant to British Justice, yet that assurance, while it is grounded upon the continual dependency of our Judges, can afford no sufficient and practical remedy against the abuse of Your Majesty's Royal Prerogative by the Provincial Administration. This abuse of Your Majesty's Royal Prerogative has been flagrantly manifested by the late violent, precipitate and unjustifiable removal of the Honorable Mr. Justice Willis from the Court of King's Bench in this Province.

The pretence for this almost irreparable wound to the Constitution appears to have been the declaration of an opinion by that learned and upright Judge, upon the constitution of the Provincial Court of King's Bench, which opinion was evidently expressed to explain and justify his submission to a conscientious conviction of the impropriety of knowingly proceeding in the administration of the law in a Court not organized as the law requires.

By the Provincial Act erecting that Court, it is wisely provided, "that a Chief Justice, together with two Puisné Judges, shall preside therein." No explanation can add to the clearness of that provision, so obviously conducive to the safety and liberty of the subject; and it has become our urgent duty humbly to declare to Your Majesty, that our duty forbids us to yield to the attempts of the local Administration, to entail upon us the dangerous encroachments made in years of past misrule, by establishing such a construction of that law as would place the rights and liberties, the property and lives of the people of this Province, at the disposal of one, while a liberal salary is provided for three Judges.

The opinion of the learned Judge became officially known to the local Government some weeks before the commencement of the Term in which it was expressed.

Finding that no step was taken to organize the Court according to law, and avert the consequences inevitably following pertinacity in the error, Mr. Justice Willis honorably withdrew from a scene, by a continuance in which he must have com-

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promised his judicial character. Under these circumstances, it appears that the Executive availed itself of the dependency of the Judiciary, and Mr. Justice Willis was unnecessarily and violently removed from his office, because, educated in no school of subservient principles, he would not yield to doubtful expediency and unlawful usage.

We are not insensible of the advantages of the provision against granting offices in Your Majesty's Colonies in America to persons resident or intending to reside in Great Britain; a provision manifestly intended to apply particularly (perhaps exclusively) to offices which could be exercised by Deputy, and therefore farmed out to the best bidder; but it is with concern and dismay that the people of this Province have witnessed the perversion of law and power, for the dangerous purpose of removing a Judge, whose only offence we believe to be a scrupulous and conscientious discharge of his judicial duty.

The same power which authorized the removal of Mr. Justice Willis, supposing it to be lawful, and the appointment of Mr. Justice Hagerman in his place, might with greater facility have created a Chief Justice to organize the Court according to law. But we feel that the magnitude of the outrage itself against the justice of the Country is so great, as to forbid our descending to those particulars of which we can be only partially informed, from the policy of the local Administration in withholding from us that information which might more fully expose the enormity of the transaction. We humbly desire, however, to declare to Your Majesty, that had the law not placed it in the power of the local Government to avert the evils, the apprehension of which they affect to have influenced their conduct, we would esteem those evils very subordinate to this intimidation of our Judges, by the cruel aspersion of the character and unjust ruin of the prospects of one of their number, by the bold and daring exercise of arbitrary power.

Although the defective constitution of the Court, and the consequent illegality of its proceedings, have been known to the Provincial Government since Trinity Term last, yet the administration of Justice has not been relieved from this serious embarrassment, by the due organization of that Court, nor has His Excellency been advised to bring this all-important state of the Country under the notice, or to recommend it to the consideration of the Provincial Legislature. We therefore cannot too earnestly express to Your Majesty our deep sense of the injustice, inexpediency and illegality of persisting in the maintenance of the present defective state of the Court; and to represent to Your Majesty the sacred duty which we feel to be imposed upon us, firmly to protect the interest of those suitors who have been prejudiced, either because they abstained from a Court which was violating law, or because they were driven by their necessities to yield to this assumption of judicial power.

In Michaelmas Term last, Mr. Justice Hagerman alone constituted our Court of King's Bench, wherein he confirmed his own questioned judgment at the preceding Assizes, in a trial in which Mr. Justice Sherwood was interested; the result of which trial involved a property of very great value, acquired through those extraordinary judicial proceedings in the case of Mr. Randall, whose injustice has long been unavailingly an object of legislative relief and public sympathy. It is from such proceedings, such Courts, and such Judges, that the people desire to be relieved.

We had hoped that the appointment of Judges from England would redeem the character of the Provincial Judiciary; but that hope has been greatly impaired, by finding that such men have been esteemed by those in power too conscientious for Colonial rule. We feel that no gentleman of the English Bar, gifted with learning and character, will come to administer justice amongst us, if he is subject to an ignominious removal, and obliged to meet in England charges unknown to

him, got up against him without regard to the laws of honor, or justice of the country.

We humbly express to Your Majesty our serious apprehension that the learned Judge who has thus far been a victim of Provincial persecution may be elevated to some higher place in Your Royal consideration, instead of being restored to his seat upon our Bench, as the most effectual method of wiping away the stain attempted to be affixed to his character, and of healing the wound inflicted upon the Justice and Constitution of the Country. His reinstatement in office as our Judge, is most desirable for the peace and happiness of the Province, and for the restoration of public confidence in the administration of the law.

In the name of equal justice, we further humbly pray Your Majesty to cause a strict inquiry to be made into the conduct of all persons directly and indirectly concerned in this overbearing and despotic proceeding; and, as the only means of assuring our future security, to expose them to whatever punishment may be due to their respective crimes, as advisers, abettors, and approvers of the same.

Should Your Majesty be advised to disregard these our just and earnest prayers against grievances which have increased under the patience with which we have hitherto endured them, we shall be constrained to feel, that while we form a part of the British Empire, we are excluded from sharing its equal and exalted justice.

We again humbly pray Your Majesty to lay the whole matter and prayer of this Address before the British House of Commons, and to communicate to them our earnest hope that they will be pleased most favorably to regard our wishes, and promote by their wisdom and counsel the redress of our wrongs.

Signed,) MARSHALL S. BIDWELL,  
Speaker.

Commons House of Assembly, 14th March, 1829.

## No. 56.

Mr. Randall's Services to the Province.—Address of the House of Assembly of U.C., to His Excellency Sir John Colborne.

[From Journals of Assembly, U.C., 1829.]

Resolution Moved by Mr. JOHN ROLPH :

We, His Majesty's dutiful and loyal subjects, &c. &c., humbly represent to Your Excellency, that Robert Randall, Esquire, at a time when the people of this Province justly felt themselves profoundly interested in a measure likely to be consummated into a law, did, at the solicitation of a large number of the inhabitants, proceed to England with a petition numerously signed, for the purpose of laying the anxious wishes of the petitioners before His Majesty's Government, by whom he was recognized as an agent. For his patriotic, disinterested and successful services, the people have, through their representatives, attempted to remunerate him out of the moneys raised from them for their happiness and welfare. The provision made by this province for that purpose, by bill, has failed in the Legislative Council, and we therefore are constrained to appeal to Your Excellency to pay Robert Randall, Esquire, the sum of £500, out of any moneys at the disposal of your Excellency, and which sum we will never cease to exert ourselves to redeem.

MARSHALL S. BIDWELL, Speaker.

Commons House of Assembly, March 19th, 1829.

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This Address was presented to the Lieutenant Governor by Messrs. Rolph and Matthews, the Members for Middlesex, on the day of the prorogation, and His Excellency's answer is as follows:—

"GENTLEMEN:—The bills which are now before me for my assent prevent my giving a due consideration to the subject of this Address at present, but I shall direct my attention to it during the recess."

## No. 57.

### Bill No. 2, passed in Assembly for Randall's Relief.

In the next Legislature Honorable Doctor Baldwin and William L. Mackenzie introduced the following Bill, appointing the Honorable Louis Joseph Papineau, (then Speaker of the Lower Canada Assembly,) Chancellor; to afford relief to Mr. Randall. (Judge Willis had gone to Europe.)

#### BILL.

"WHEREAS Robert Randall has, by petition complained, that he has suffered great loss and injustice, under a judgment obtained against him in the Court of King's Bench, in this Province, by Henry John Boulton, Esquire, His Majesty's then Solicitor General, which judgment, the Petitioner alleges, was obtained against the rules of law and equity; And whereas adequate relief cannot be afforded by the said Court of King's Bench, it is therefore expedient, that an inquiry should be made into the wrongs alleged, and right be caused to be done, if, upon due inquiry under oath, it shall be made to appear that such great injustice has been done; Be it therefore, &c., That it shall and may be lawful for the Honorable Louis Joseph Papineau, Speaker of the House of Assembly of Lower Canada, under and by virtue of this Act, at York, in the Home District, to inquire into the truth of the statements in the said petition set forth; and for the purpose of that inquiry, it shall and may be lawful for the said Louis Joseph Papineau, in the presence of the parties or their Attorneys, or such of them as shall, after due notice, appear, to summon and examine, upon oath all witnesses deemed necessary for the attainment of justice between the parties, and to enable the said Louis Joseph Papineau to inform his judgment in making his decree or decrees, as hereinafter mentioned; and any person convicted of wilful false swearing before the said Louis Joseph Papineau, under this Act, shall be liable to the same punishment as is now inflicted by the laws of this Province upon persons guilty of perjury.

"And be it, &c., That the aforesaid matter shall be heard and determined, and the witnesses examined, in open Court whereunto all His Majesty's subjects shall have free access: Provided always, that it shall and may be lawful for the said Louis Joseph Papineau to commit any person for a contempt of the Court, for a period not exceeding one month, and to fine such person a sum not exceeding fifty pounds.

"And be it, &c., That it shall and may be lawful for the said Louis Joseph Papineau, having heard the said Petitioner, and the said Henry John Boulton, and such other persons as he the said Louis Joseph Papineau shall summon, or such of them as shall appear after due notice, to make such decree or decrees, for either the confirmation, or the reversal of the said judgment and of the proceedings had thereupon, and of any sales of land heretofore made, under and by virtue of the said judgment, as he the said Louis Joseph Papineau shall deem necessary for the doing of justice between all parties interested in the matter.

" And be it, &c., That any decree made by the said Louis Joseph Papineau, under and by virtue of this Act, shall be obligatory and binding upon the person against whom, or in whose favor, the same shall be made; and if any person against whom, and in whose favor, any decree shall be made, shall neglect or refuse to comply therewith, it shall and may be lawful for any person interested in such decree to have the same registered, which decree, so registered, shall have the same virtue and effect as if the said decree had been literally obeyed.

" And be it, &c., That every decree made by the said Louis Joseph Papineau, shall be under his hand and seal, attested by two witnesses, and made on or before the first day of September, in the year one thousand eight hundred and thirty-one.

" And be it, &c., That upon the production of any decree aforesaid, and a copy thereof, to the Register of any County or Riding in this Province, in whose County or Riding the land in the said decree mentioned shall be, and upon an affidavit made before such Register, or his deputy, or any Commissioner of the King's Bench for taking affidavits, of the due execution of the said decree or decrees before such Register, it shall and may be lawful for him to register the said decree in his office, and to file the copy thereof, and for such registry and filing to demand and receive the sum of one pound.

" And be it, &c., That it shall and may be lawful for the said Louis Joseph Papineau to award against either of the parties such costs and charges as he shall deem right and just, and for the recovery of which costs and charges so awarded, it shall and may be lawful for the party interested to proceed by action of debt in any Court of Record in this Province."

## No. 58.

### VOTES.

\* On the question of its passage in Assembly, the Yeas were, Messrs. François Baby, Doctor Baldwin, Blacklock, Brouse, Buell, Cawthra, Dalton, Dickson (of Niagara), Fraser, George Hamilton, Henderson, Hopkins, Hornor, Ketchum, Lefferty, Longley, Lyons, McCall, Mackenzie, Malcolm, William Morris, Perry, Radenhurst, John Rolph, Shaver, Smith of Durham, Terry, Thompson, Wilkinson, James Wilson, and Woodruff,—31. The Nays were only two, Messrs. Bethune and John Wilson.†

In the Legislative Council the Bill was not amended, nor passed—it was rejected.‡

## No. 59.

Mr. Randall to Mr. Secretary Mudge, complains of delay in the Administration of Justice.

(Copy.)

YORK, March 4, 1830.

Sir,—I have the honor of transmitting to you, for the information of His Excel-

† See Journals of Assembly, 1830, U.C.

‡ See Journals of Legislative Council, 1830, U.C.

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lency the Lieutenant Governor, a copy of the Report made by the House of Assembly upon my petition of grievous loss of property from the undue administration of public justice.

That others may have suffered from the same cause I cannot doubt, but I humbly hope that the patient suffering of injustice by many will not be prejudicial to my seeking relief against the magnitude of my loss.

The enclosed Report was the result of an investigation by a Committee composed of the present Speaker of the House of Assembly, the present Chief Justice, Captain Matthews, Mr. John Rolph, and Mr. Beardsley.

On the Report of that Committee a Bill was passed by the last Parliament to enable Mr. Justice Willis to try the case over again, and thus supply the want of a Court of Equitable Jurisdiction, a means of redress which exists in England in ordinary cases.

The Bill was lost in the Legislative Council.

A Bill for the same purpose passed the representative branch of the Legislature during its present Session, to enable the Speaker of the House of Assembly of Lower Canada to try the cause. It was agreed to with only two opposing voices, and that too after the case had had the fullest consideration both in and out of Parliament. But the Bill was lost in the Legislative Council, and I am still without redress.

That it is His Excellency's anxious and earnest wish that speedy and impartial justice should be administered to all His Majesty's subjects, without distinction, I firmly believe. And whether the obstruction in my case arises out of the composition of the Legislative Council, or from any other cause to me unknown, I trust that His Excellency will exert his powerful influence to remove that bar, so that I may be enabled to have my case fairly tried and determined in a Court of Law.

I have the honor to be, with profound respect,

Your most obedient and humble Servant,

(Signed,) ROBERT RANDALL.

Z. MUDGE, Esquire, Civil Secretary.

## No. 60.

Sir John Colborne's Reply.

GOVERNMENT HOUSE,

York, 25th March, 1830.

Sir,—With reference to your statement transmitted to the Lieutenant Governor on the 4th of March, with the copy of the Report made by the Committee of House of Assembly, I am directed to acquaint you that these documents have been sent to Mr. Boulton for his observations and reply; but as it appears that before Mr. Boulton can be called on to enter fully into an investigation of any of the charges that you may now think proper to allege against him, and which it is understood you have on several occasions brought forward, His Excellency requests that you will transmit to me, for his information, such a statement of your case as may exhibit distinctly whether the grounds of your complaint are against Mr. Boulton as

conductor of your suit, or against the Judges for an illegal decision, or against the Sheriff, or the purchaser of your property.

I have the honor to be, Sir,

Your most obedient, humble servant,

Z. MUDGE.

ROBERT RANDALL, Esquire, M.P.P.

## No. 61.

Hon. M. S. Bidwell to W. L. Mackenzie.

TORONTO, 18th July, 1835.

My dear Sir,—Respect for the memory of Major Randall will induce me to do cheerfully and cordially whatever I can for his devisees, without a fee; and I, therefore, with many thanks for your liberality and kindness, return the note which you sent to me.

Yours, truly,

MARSHALL S. BIDWELL.

W. L. MACKENZIE, York Street.

## No. 62.

Bill No. 3.—Agreed to and Reported by a Committee of the Legislative Assembly, U.C., for Randall's Relief.

[NOTE.—In 1835, W. L. Mackenzie gave notice, in the Upper Canada Gazette, of an application for a third Bill for the relief of Randall's devisees; the Legislative Assembly appointed Messrs. Thorburn, Mackmicking, and Waters, of Ottawa, a Select Committee on Mackenzie's petition, and Mr. Thorburn introduced a (third) Bill, unanimously agreed to by the Committee, for relief of said devisees, (March 6, 1835), but the Gazette notice was deemed defective.]

## No. 63.

Major General Rowan to Mr. Mackenzie.

GOVERNMENT HOUSE,

Toronto, 25th August, 1835.

Sir,—I am directed by the Lieutenant Governor to transmit to you, with reference to your application of the 19th instant, the accompanying copy of a statement from Mr. Stanton—and the form of notice which he has been authorized to adopt, in communicating your intention of petitioning the Legislature as an Executor of late Mr. Randall.

I am, Sir,

Your obedient Servant,

W. ROWAN.

W. L. MACKENZIE, Esquire, St. Catharines.

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## No. 64.

Mr. Stanton, King's Printer, to General Rowan.

(Copy.)

TORONTO, 25th August, 1835.

Sir,—On the subject of the notice desired to be given by Mr. Mackenzie, referred to in your letter of yesterday's date, I beg that His Excellency may be informed that in conversation with Mr. Mackenzie after my note No. 1, I did endeavour to point out to him as plainly as I thought would convey in ordinary and usual terms the information he was desirous of notifying to the public and which would have been much to the following purport:—

## "TO ALL WHOM IT MAY CONCERN:

"Public notice is hereby given that application will be made to the Legislature at its next ensuing Session by petition from the Executor to the estate of the late Robert Randall, Esquire, for the enactment of a law establishing a special tribunal for the revision of certain proceedings in the Court of King's Bench, by which Lots (enumerating the lands as described) granted by the Crown to the said late Robert Randall in 1809, were adjudged to be sold, or were sold by the Sheriff and conveyed to others; and until the issue of such application shall be determined, all persons are warned against purchasing or leasing any part of the said property."

If Mr. Mackenzie had felt at all disposed to meet such a suggestion, or had chosen to adopt any other form of words of his own, conveying in substance such a notification to the public, the insertion in the Gazette would not have been made a matter of question.

If the notice, which is above suggested, should appear to be sufficient for the proposed object, and is approved of, His Excellency's desire for its insertion in the next Gazette shall not fail to be duly attended to.

I have, &amp;c.,

ROBT. STANTON.

## No. 65.

## THE NOTICES.

NOTICE.—The Subscriber, acting Executor under the last Will of the late Robert Randall, Esquire, intends to apply to the Legislature, next Session, to take into consideration the merits of the Petition of the said Robert Randall, dated in 1830, and ordered by the House of Assembly to be entered on its Journals, praying for the creation of an equitable jurisdiction to enable him to try his right and title to the Bridgewater Estate, on the Rapids above the Falls of Niagara, and the compensation for War Losses sustained on said Estate; or that such other relief may be extended to the heirs, as upon a full investigation may be found to be just and right.

W. L. MACKENZIE.

The Notice, previous to the meeting of the Legislature, in 1836, as published for a series of months in the Upper Canada Gazette, was in these words:—

## "TO ALL WHOM IT MAY CONCERN:

"PUBLIC notice is hereby given, that application will be made to the Legislature, at its next ensuing Session, by petition from the Executor to the Estate of the

"late Robert Randall, Esquire, for the enactment of a law establishing a special Tribunal for the revision of certain proceedings in the Court of King's Bench, by which 950 acres of land in the Township of Nepean, in the County of Carleton, consisting of Lots Nos. 38 and 40 in the first Concession from the Ottawa River, and the broken fronts of the said Lots, with the broken Lots, Nos. 10 and 11, first Concession on the Rideau; also, Lot No. 11 in second Concession, and the front three-fourths of Lot No. 10, granted by the Crown to the said Robert Randall, Esquire, in 1809, were adjudged to be sold, and were sold, by the Sheriff, and conveyed to others; and until the issue of such application shall be determined, all persons are warned against purchasing or leasing any part of the said property."

## No. 66.

### Report of Select Committee of U. C. Assembly, Sess. 1836.

[NOTE.—In the Session of 1836, after ample notice to all whose interests might be affected, a Special Committee was appointed by a third Upper Canada Legislative Assembly, consisting of David Thorburn, Esquire, (now Indian Agent, Grand River,) Chairman; Mr. Small, County Judge, Middlesex, late Mr. Mackmicking, late Mr. James Wilson of Prince Edward, and Mr. Gibson of South York, who unanimously reported as follows, (and their Report, and the Report of the Special Committee of 1828, with the evidence taken on both occasions, are embraced in No. 76 of Sessions papers appended to the Upper Canada Journals of Assembly in 1836.)]

## No. 76.

[From Journals of Assembly, U.C. 1836.—Appendix.]

### FIRST REPORT,

From the Select Committee to which was referred the petition of William L. Mackenzie, Esquire, acting Executor to the estate of the late Robert Randall, of Chippawa, in the County of Lincoln, Esquire, or so much of the said petition as relates to the Nepean and Chaudière Estate, County of Carleton.

#### MEMBERS OF COMMITTEE :

David Thorburn, Esquire, Chairman; Mr. Macmicking, Mr. Small, Mr. James Wilson, and Mr. Gibson.

"To the Honorable the House of Assembly, &c., &c., &c.

"The Select Committee to which was referred the petition of W. L. Mackenzie, Esquire, acting Executor of the Estate of the late Robert Randall, in his life time of Chippawa, in the County of Lincoln, Esquire, have inquired into the matters referred to them, so far as concerns the estate at the Nepean and Chaudière, and beg leave to submit the following as a first Report :—

"In the year 1809, Mr. Randall obtained a grant from the Crown of one thousand acres of land, and a deed for 950 acres in the County of Carleton, part of which included water privileges of extraordinary value. His agents in obtaining this property were the late Honorable Mr. Justice Boulton, and his son Mr. H. J. Boulton, late Attorney General of this Province, who thus possessed the means of acquiring a knowledge of the worth of the grants.

"The remarkable circumstances under which Mr. Randall's lands were sacrificed—the unusual hardships of his case, and the renewed efforts he made to obtain justice, are well known to the Country.

"In 1828 he applied, by petition, to the House of Assembly for such redress as it was in the power of the House to afford, and a Special Committee was appointed, consisting of the Honorable M. S. Bidwell, now the Speaker of this House, the Honorable John Beverly Robinson, Chief Justice of Upper Canada, the Honorable John Rolph, B. C. Beardsley, Esquire, now of New Brunswick, and the late Capt. John Matthews.

"An attested copy of this Petition, with the interesting Report of that Committee, and the evidence on which it was founded, are hereto annexed, also a copy of the Bill which its Chairman reported, appointing a Court of Equitable Jurisdiction to do justice in the case, the Honorable Justice Willis to be the Judge. The House of Assembly passed the Bill, but the Legislative Council, being opposed, it is presumed, to its principle, declined to amend it,—they threw it out. Mr. Randall had previously applied to the Court of King's Bench, but from that institution he obtained no redress.

"On the 14th of March, 1829, the House of Assembly addressed His Majesty on the state of the administration of justice. We quote two paragraphs:—

"By the Provincial Act erecting that Court (The King's Bench) it is wisely provided 'that a Chief Justice, together with two puisne Judges shall preside therein.' No explanation can add to the clearness of that provision, so obviously conducive to the safety and liberty of the subject, and it has become our urgent duty, humbly to declare to Your Majesty, that our duty forbids us to yield to the attempts of the local administration, to entail upon us the dangerous encroachments made in years of past misrule, by establishing such a construction of that law as would place the rights and liberties, the property and lives of the people of this Province, at the disposal of one, while a liberal salary is provided for three Judges.

"In Michaelmas Term last, Mr. Justice Hagerman alone constituted our Court of King's Bench, wherein he confirmed his own questioned judgment. At the preceding Assizes, in a trial in which Mr. Justice Sherwood was interested, the result of which trial involved a property of very great value, acquired through those extraordinary judicial proceedings in the case of Mr. Randall, whose injustice has long been unavailingly an object of Legislative relief and public sympathy. It is from such proceedings, such Courts, and such Judges, that the people desire to be relieved."

"In 1832 the House of Commons of the United Kingdom addressed His Majesty, requesting that a copy of the above-mentioned Address from Upper Canada might be laid before it. His Majesty sent it down, and the House ordered it to be printed and placed among its records, but Mr. Randall obtained no relief.

"In 1830 he again petitioned the House of Assembly for redress, and a bill was introduced, ordered to a third reading by a vote of 33 to 2, and passed by a vote of thirty-one to two, appointing the Honorable Louis Joseph Papineau, Speaker of the House of Assembly of Lower Canada, a Judge in Equity, to try the case and do justice, but the Legislative Council, being as before, it is presumed, opposed to the principle of the Bill, it was found on an examination of their Journals, on the motion of Mr. Perry, that they had ordered its further consideration to be deferred three months.

"In 1830 Mr. Randall applied, by petition, to His Excellency Sir John Colborne, stating his case and exhibiting the proceedings had by Mr. Boulton, but his application was productive of no beneficial results; his petition and reply are hereto appended.

"In 1833 he applied to the Governor in Chief on the subject; we annex hereto the Correspondence.

"In 1834, Mr. Randall died, having spent nearly seven years of his life in a Prison, and the last thirteen years of it in a series of vain and fruitless efforts; to obtain in Upper Canada, that tardy justice which the defective organization of our Judicial Institutions, the personally interested situation of some of our Judges, and the character and composition of the Legislative Council, denied him. His Executors under the Will, the late Colonel Thomas Horner and the present petitioner, took, it is presumed, such steps as they believed to be the best, on behalf of his estate, when the cholera carried off the former, and nothing further was done in the matter of the Chaudière property until last Session, when Mr. Mackenzie applied for the interposition of the House, which appointed a Committee, and a Bill was a third time reported in a third Parliament for the adjudication of the claim according to equity. But as it had been omitted to give a notice in the Gazette, in the matter, which affected private rights, further proceedings were deferred till the present Session.

"After some difficulties as to the style and tenor of the notice, an advertisement was placed in the Upper Canada Gazette, and the matter is now brought for the fourth time before the Legislature by petition.

"The correspondence between the late Mr. Justice Boulton, Mr. H. J. Boulton, and Mr. Randall, at the time the former acted as Agents in obtaining the property from the Crown, a letter to Lieutenant Governor Gore, from Mr. McGilvray, of the North West Company; and a letter from Captain LeBreton and others, who wished to buy the Chaudière property or parts of it, are reported herewith. Mr. Waters, a Member of the House for the District of Ottawa, was desired last summer to make inquiry as to the worth of the Chaudière property, and in whose possession it was; and your Committee have examined that gentleman, who is of opinion that it is worth about £20,000, and will greatly increase in value.

"In the concluding paragraph to the Report of 1828, we find the following passage:—

"Your Committee have to remark that Mr. Boulton was conducting a cause for himself against his own client, and when they consider the nature of the debt, the great and multiplied irregularities by which the judgment and execution were obtained—the great value of the property sacrificed; and the expensive and fruitless endeavors of the Petitioner to obtain a reversal of the proceedings, they do not hesitate to recommend relief. Independent of the interest of one of the Judges, it appears that the Court of King's Bench, if they set the proceedings aside, could not afford adequate relief, and therefore your Committee have reported a bill enabling the Honorable Mr. Justice Willis to inquire into the matter alleged in the petition, and to do justice between all the persons interested.

"Eight years have elapsed since the bill mentioned in the above extract was reported—the veto of another branch of the Legislature continued to withhold redress from the complainant, until the grave closed upon his importunities.

"For the relief of his heirs this Committee do now report a similar bill to those passed in 1828 and 1830, and its Members unite in the expression of a wish that a judicial inquiry will no longer be deferred, but that justice will be speedily done between all the persons concerned.

"DAVID THORBURN, Chairman.

"Committee Room, House of Assembly,  
"30th March, 1836."

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## No. 67.

## Proceedings of the Committee.

THURSDAY, 21st March, 1836.

The Committee met.

*Charles Waters*, Esquire, M.P., Ottawa District, called in, and examined:—

Question 1. What do you consider the fair value of the property in Nepean claimed by Mr. Randall's heirs, and for which he has a Grant and Deed from the Crown, dated in 1809?—Answer. The value of the property on the Ottawa River, embracing, as it does, water privileges of the first magnitude, and an extensive quarry of first rate stone for building, and lying in the immediate vicinity of Bytown and over which Bytown would shortly extend if Plots were exposed for sale, is immense at the present moment, and from the commanding position of Bytown the increase in the value of this property must be very rapid and very great; and which, together with the valuable property at the confluence of the River Jacques with the River Rideau, embracing as it does a most valuable Mill site and other important advantages, I should consider the whole, were I the owner, worth about £20,000.

Question 2. Have you personally inspected and examined this property?—Answer I have.

Question 3. The statements by you, and now shown you [No. 42, above], are they not the results of personal inquiry by yourself on the property?—Answer. They are the results of personal inquiry, made by myself on the property.

## No. 68.

## Mr. Waters to Mr. Mackenzie.

BYTOWN, 21st July, 1835.

W. L. MACKENZIE, Esquire.

Sir,—I have been here about three days looking after the Chaudière property, and examining maps, &c. I find Captain LeBreton owns Lot No. 40, covering the Falls. It is, or rather will be, Bytown itself, and is very valuable. A gentleman tells me that he will give £1000 for the sole privilege of making a slide down the Falls to run timber over, and the lot will be a Town plot.

No. 38 belonged to Judge Sherwood, and he sold it to one Peter Aylwin for £350 cash, and it is worth double that.

No. 39, Clergy Reserve, Government holds as I am told, it meets the Union Bridge at the Ottawa, there are good buildings on it, occupied, as I believe, by one Firth.

Yours, &amp;c.,

C. WATERS.

## No. 69.

## Mr. Waters to Mr. Mackenzie.—Mr. Randall's Nepean Estate.

LONGUEUIL, 28th July, 1835.

W. L. MACKENZIE, Esquire.

I have been at Richmond, in the County of Carleton, and at Perth, in the County

of Lanark, and have examined the Office of Registry at Richmond, in going and returning; at Perth I examined the Treasurer's Office, and also the Registry of that County; I find that from the Sheriff's deeds of sale of Major Randall's lands in Nepean, John LeBreton purchased Lot No. 40, first Concession on the Ottawa, and the broken front of said Lot, &c.; that Levius P. Sherwood, a Judge in the King's Bench, purchased broken Lots Nos. 10 and 11, first Concession, and Lot No. 10, second Concession, on the River Rideau; and that afterwards, to John LeBreton, by deed and release made by L. P. Sherwood, Esquire, a joint proprietor of the Lot No. 40, first Concession, and broken front of said Lot on the Ottawa, that is to say, one undivided half of said Lot and broken front thereof; and that L. P. Sherwood, Esquire, by deed conveyed to John LeBreton, the one undivided half of Lots Nos. 10 and 11, first Concession, No. 10, second Concession, on the River Rideau, and that exchange deed or deeds of separation and division were passed and exchanged between them, and thereby L. P. Sherwood owns east half of Lot No. 40, in the first Concession, and broken front of said Lot on the Ottawa, together with an equal privilege of four islands in front thereof, and that John LeBreton owns the west half of said Lot and broken front thereof, islands, &c. These conveyances appear to be of the nature of lease and release from one to the other, firstly, to make them co-partners, and then a division of Lot No. 40, in first Concession, and broken front of the said Lot, &c., on the Ottawa, which plainly shews what I had always understood, that they purchased those lands in partnership, at Sheriff's sale; the Lot No. 40, &c., on the Ottawa, is in reality, and there might easily be made of it, in my opinion, £10,000. It covers water privileges worth half that sum. The Union Bridge across the Ottawa, abutting on the Lot. For sales out of the broken front of the said Lot, you will notice the annexed memorandum; there are two parcels or privileges, one of which, (an acre), was conveyed by L. P. Sherwood, Esquire, and Charlotte his wife, to His Majesty King George IV., on which stands a block of buildings at the end of the Bridge, built by Government, but now unoccupied. These are the buildings I formerly mentioned that were supposed to be on the other Lot: this Lot and privilege are certainly the most valuable property in all this part of Upper Canada.

Lot No. 10, in the second Concession, River Rideau, comprises a valuable Mill site on the River Jacques, emptying into the Rideau; broken lots 10 and 11 cover the mouth of that River, and front on the Rideau River. These Lots, together with No. 11 in the second Concession, are in my opinion, worth 40s. to 50s. per acre; the lands are good, and privileges great. Lot No. 40, first Concession, &c., on the Ottawa, might, and in fact will, and must be a continuation of Bytown, which will in a few years, be the most important Town in Upper Canada.

There is no one on the lands on the Rideau. There are squatters on No. 40, on the Ottawa, but I cannot find out that there are any on No. 39 or 38, (Ottawa.)

N.B.—The second parcel of land sold out of the broken front of Lot No. 40, on the Ottawa, is as follows,—Firstly, from John LeBreton, out of the east half a water and land privilege, &c., to Samuel Stacey and George Lyman Bellows, both Foreigners. Samuel Stacey then sold out his right to the said George L. Bellows, then George L. Bellows sold to Henry Stacy, then Henry Stacy sold out to Henry Church, Henry Church then sold out to Matthew Cornell of Bytown, since dead; this is as far as I can trace any sales or titles in the Bathurst District; it has been a most extraordinary as well as intricate transaction. The conveyances appear to be quit claims, which shews a doubt of the title. L. P. Sherwood and wife, sold the acre to the King, in 1829, February 24th.

Mr. Henry Sherwood professed to sell Lot No. 30, first Concession, Ottawa, and received a sum of money and gave a receipt, but gave no deed. Afterwards the Honorable L. P. Sherwood sold the same Lot, as I am informed, to Peter

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Aylwin, for \$1,400, but I can find no record or deed. In this sale there is a mystery; this lot will soon be worth £10,000, if not now.

Your's &c.,

C. WATERS.

## No. 70.

Bill No. 4, Passed by the House of Assembly of U.C., for Randall's Relief.

[NOTE.—Mr. Thorburn, for the Committee, then introduced a (fourth) bill for the relief of Randall's heirs, which passed through a Committee of the Whole, 28 Ayes to 10 Noes; and at its third reading unanimously. This bill was similar to the three bills preceding it, except that it appointed the Honorable R. A. Tucker, who had been Chief Justice of Newfoundland, and was afterwards a member of Sir George Arthur's Executive Council, as the Chancellor, to do justice in the cause.

The Legislative Council, as then constituted, sought not to amend the bill—they threw it out—would give no relief, and offered no reasons for their refusal. The Assembly placed the Report and evidence as a record on their Journals, of which they occupy 31 folio pages. Next year (1837) came the political difficulties, the result of which exiled many Members of the Legislatures of the Canadas, and prevented this Petitioner from taking further steps in fulfilment of the trust reposed in him. Colonel Thomas Horner, M.P.P. for Oxford, the other acting Executor, died, of cholera, a few months after Mr. Randall's decease.]

## No. 71.

Devisees residing in the United States.

Messrs. FILLMORE, HALL and HAVEN, to W. L. MACKENZIE.

(Copy.)

BUFFALO, Feby. 9th., 1838.

"Hon. W. L. MACKENZIE,

"Sir,—We understand you are one of the Executors of Robert Randall, late of "Chippawa, Upper Canada, deceased. We have been requested by Gerard Wil-  
"son and his sister, of Baltimore, and the representative of Randall Wallis, to  
"make some inquiry as to the situation of the estate and its prospects. We un-  
"derstand you are the only Executor who has acted under the will. May we  
"trouble you to write us immediately upon the receipt of this, and give us such  
"information in relation to the estate and its settlement, as you can communicate  
"from recollection, and such papers as you have under your control. From what  
"we have been able to learn, we are led to think that Mr. Randall was greatly in-  
"jured by the Government Party when living.

"Please direct your answer to Mr. Fillmore, M.C., Buffalo.

"We are, respectfully,

"FILLMORE, HALL & HAVEN."

[William L. Mackenzie made such a statement as his then situation permitted, and on the 14th of April, promised further information.]

Mr. FILLMORE replied:—

Honorable MILLARD FILLMORE (late President of the U.S.) to W. L. MACKENZIE.

(Copy.)

“WASHINGTON, April 20th, 1838.

“Honorable W. L. MACKENZIE.

“Sir,—Yours of the 14th is received. I hope it may be convenient for you to give my partners the desired information soon. You can address it to me at Buffalo, and if I am not there it will go into their hands.

“I am, respectfully yours,

“MILLARD FILLMORE.”

## No. 72.

Opinion of Hon. Robert Baldwin.

Hon. R. Baldwin to Mr. J. H. Culp.

TORONTO, 13th July, 1838.

Dear Sir,—I should be happy to afford Mr. Randall's family any professional assistance in my power in pursuit of any rights that may be found to be unjustly withheld from them.

It would, however, be impossible for me, consistently with my other engagements, to leave the city at this moment, and, indeed, from the little I do remember of the subject matter of the business to which your letter refers, it would require a much more lengthened investigation, preparatory to submitting it to the consideration of any one, than I could at this time appropriate to the purpose. It was, I believe, the subject of some Parliamentary report—if so, this might be made the foundation of an application to Lord Durham. But if the matter is to be gone into fully, with the view of any judicial action upon it, you will, I am satisfied, find that it cannot be done but at the expense of much time and labour.

Lord Durham, of course, cannot alter the legal relation of parties. An application to him for such purpose, would, therefore, be inoperative. And for any other, the Parliamentary Report, which I have not, however, at present by me, would, I should think, answer every purpose; at least, if the subject was, as I presume it was, fully gone into.

I remain, dear Sir,

Your obedient Servant,

ROBT. BALDWIN.

Mr. J. H. CULP, Drummondville.

## No. 73.

Judge Sherrywood's application for part of Amelia Island.

(Copy.)

TORONTO, 21st May, 1840.

Sir,—I have the honor to acknowledge the receipt of your letter of the 14th

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instant, on the subject of my application for a part of Amelia Island, at the Falls of the Chaudière, on the River Ottawa.

I would like to receive a license of occupation of the lower half of the Island (about five-eighths of an acre) till I can obtain a grant of it from the Government, or a purchase conformably to the copy of the Minute of the Executive Council referred to by you, and which you were so kind as to enclose to me.

I have the honor to be, Sir,

Your obedient humble Servant,

L. P. SHERWOOD.

The Hon. R. A. TUCKER, Provincial Secretary.

## No. 74.

Judge Small to Mr. Culp.—As to the management of the Randall Estate.

TORONTO, 27th October, 1840.

Dear Sir,—Yours of the 20th came duly to hand; and I have to inform you in answer, that nothing has yet been done in consequence of a difficulty having presented itself, in respect to Mr. McKenzie, who altho' outlawed, is not thereby deprived of his right to exercise the office of Executor.—The Court of Probate therefore refuses to interfere unless he will consent to relinquish his Executorship. I am however not without hopes that I shall be able to convince the Court that there can be no objection to your being appointed during McKenzie's absence, should I succeed every purpose will be answered. I shall communicate with you as soon as a decision is come to, and should have written sooner, but was in hopes of being able to acquaint you with the result.

I remain your obedient Servant,

JAS. E. SMALL.

INFORMED.—Letter of James E. Small, Esq., relative to the Randall Estate, dated 27th October, 1840.

## No. 75.

Judge Small to Mr. Culp.—As to the Administration of the Randall Estate.

TORONTO, 20th May, 1841.

Sir,—Your letter of the 17th is before me, and I regret to find that you have not been made acquainted with the decision of the Court of Chancery in your case. I gave instructions to the young gentleman in my office some three months ago to write to you upon the subject, and was led to believe that it had been done. I have now to inform you that the Court of Probate, as also the Court of Chancery, will not interfere by appointing another Executor, or rather, an Administrator with the will annexed, in the life time of Wm. L. Mackenzie, without his relinquishment of his Executorship. The only prospect of succeeding will be by filing a bill in Chancery to compel Mr. Mackenzie either to proceed with the Executorship or to relinquish,

when of course, he will be obliged to do the latter. Should you determine upon this course, let me know immediately.

Your's &c.,

JAS. E. SMALL.

Mr. ISAAC H. CULP.

## No. 76.

Messrs. Turner, Gwynne and Bacon, to Mr. Culp.

Mr. ISAAC CULP, Drummondville.

Dear Sir,—Enclosed you will receive the Letters of Administration of the late Robert Randall. You will observe that the Court of Probate have not required Bonds as in ordinary cases of Administration.

With respect to the last clause in your letter, stating that E. C. Campbell, Esquire, at Niagara, is your man of business through whom your affairs will be transacted with us hereafter, we are at a loss to understand precisely what you intend to convey. You were pleased to retain us and especially inform us we were to act as principals in the contemplated proceedings; and if after this your intention should be that we are only to act as Agents we must beg to decline doing so. If, however, you merely intend that we are to act as principals, but refer to Mr. Campbell for such information as may be required, we shall be glad to use our best exertions in your behalf.

We are, dear Sir,

Yours, very obediently,

TURNER, GWYNNE & BACON.

Toronto, Feby. 6., 1844.

INDORSED.—Mr. Isaac Culp, Drummondville, Canada.

## No. 77.

The Executor's Warning to the Public, relative to the Nepean Estate.

BYTOWN, (CANADA WEST), September 28, 1850.

Estate of the late ROBERT RANDALL in HULL and NEPEAN.

HAVING observed Advertisements in the Bytown Papers, and received copies of Handbills concerning the Estate of the late Robert Randall, Esquire, M.P., relative to proposed sales, or to the management of said Estate, I hereby give notice that no person is or has been authorized by me to interfere in or transact any business relative to said Estate, and that agreements made without my concurrence will be found to be null and void.

Toronto, 23rd September, 1850.

WILLIAM L. MACKENZIE,  
Executor.

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## No. 78.

Lot No. 40, Nepean.—Its value.—How advertised for sale.—George Malloch, Esquire.—His Evidence.

The Petitioner, in a suit tried last Fall Assizes, at Bytown, made inquiry after one of the Hon. James Morris's brothers, who was at the sale of the Chaudière Estate, at Brockville, but found he had died. While George Malloch, Esquire, was under examination, as a witness for Judge Sherwood's heirs and devisees, Petitioner suggested to Mr. Lyon, M.P.P., then of Counsel in the suit, to ask him whether he knew of the advertising of Lot No. 40, Nepean, Ottawa Front, or was present at the sale. He replied, that he did not recollect being present at any sale, though he might have been; that Judge Sherwood, previous to the sale of Lot 40, had sent him out to Point Nepean, to ascertain its real value; that he supposed, though he did not know, that the Lot had been advertised in the U. C. Gazette, but had no recollection of the fact; the Brockville Recorder was established about the time; he (Mr. Malloch) did not remember that any notice of the sale of Randall's land was inserted in it, though it might have been.

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## No. 79.

Letter from Randall's Attorney in 1821, as to the proper remedy in the case.

BRANTFORD, 24th January, 1853.

Dear Sir,—On Friday last Mr. Thaddeus Smith called on me, and stated that you requested to know if I could make any suggestions that would be of service in the Randall affair. I have read your Petition which you sent me, and I feel that if you can only get the Legislative Assembly to act with the firmness and justice which our Upper Canada House of Assembly did on the occasion, there will be little doubt that justice will yet reach this iniquitous transaction. If it has not yet occurred to you to put a clause in the Bill that the Statute of Limitations shall not be a bar to the action that the Estate may bring, it is highly necessary that it should, for any relief that the Legislature may afford, should not be defeated by the Statute of Limitations. This is all I can think of at present.

I remain your obedient Servant,

ALEX. STEWART.

W. L. MACKENZIE, Esquire, M.P.P., Toronto.

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## (B.)

DOCUMENTARY EVIDENCE, laid before the Select Committee on the Affairs of ROBERT RANDALL, Esquire, deceased, as far as relates to the Clergy Reserve Lot No. 39, Concession A, in Nepean.

No.	DATE.	SUBJECT.	Page.
1	October 5, 1807..	Randall's Petition for Lease of 39 in 1st Concession, and 39 in Concession A, of Nepean.....	99
2	February 23, 1809..	Randall's Lease for 39 in 1st Concession A, Nepean.....	99
3	May 19, 1821..	Heward to Randall intimates Arrears of Rent.....	99
4	July 23, do ..	Attorney General Robinson to D. Cameron, to prepare Commission respecting Arrears of Rent.....	100
5	.....	Randall's Petition, to be allowed to pay Rent.....	100
6	November 13, 1823..	Burke to Col. Cockburn, transmitting and recommending Berrie's Petition for Acre of Lot 39, adjoining Richmond Landing ..	101
7	April 15, 1824..	Burke certifies that Firth obtained through him the Governor's permission to occupy 39 in 1st Concession ..	101
8	do 21, do ..	Burke to Firth enclosing Extracts as below ..	102
9	.....	In above, 1st Extract, Hillier to Burke, desires Firth to send Petition for 39; in the meantime may occupy.....	102
10	.....	In above, 2nd Extract, Hillier to Burke, thinks there can be no objection to Firth entering on possession.....	103
11	February 6, 1830..	Lieutenant Governor, per Secretary Mudge, thinks there will be no objection to renewal of Randall's Lease if the Land should not be required for the Public Service ..	103
12	January 3, 1833..	Randall's Petition for renewal of Lease ..	104
13	April 24, do ..	Order in Council, refusing renewal, the Land being "indispensably necessary to the Public Service" ..	104
14	do 2, do ..	H. J. Boulton to Captain Bolton, R.E., Commanding at Bytown, treats Lease from Colonel By to Mr. Firth as a mere nullity... ..	105
15	August 21, do ..	Commissioner P. Robinson, on a Petition of Firth's, that the Lot is required for "Public purposes" ..	105
16	do 22, do ..	Secretary Rowan to Firth, transmitting copy of the above ..	105
17	do do do ..	James Talbot to Isaac Firth, respecting his Petition and unsatisfactory reply ..	106
18	November 8, do ..	Colonel Elliot certifies that Firth had Lord Dalhousie's permission to occupy a part of Clergy No. 39, in the 1st Concession, Nepean (part of Lot?) ..	106
19	do —, do ..	Firth's Petition for Lease of Lot 39, in 1st Concession, Nepean, (part of Lot?) ..	107
20	February 6, 1834..	John Beikie to Firth, communicating Order in Council, Petition not granted (implies only part of Lot was asked).....	107
21	October 11, 1838..	Report by Sullivan, on another Petition of Firth's for 39, in 1st Concession, that Petitioner has no claim ..	107
22	December 11, 1839..	T. McKay to Rochester, that nothing can be done till reserve question be settled.....	108
23	do 28, 1840..	Andrew Tod to Firth, respecting his Petition.—Claims of Randall and Berrie to be first disposed of.....	108
24	November 2, 1844..	Clergy Reserve Inspection Return of Roberts and Chitty, shews Rochester in possession of 39, in 1st Concession, and three Occupants on 39, Concession A, of whom McLachlin is returned, with recommendation that he pay Banning and Dorin for their two shanties ..	109
25	do —, do ..	Roberts, by letter, gives reasons why he thinks Rochester should be returned for 39, Concession A ..	109

## (B.)—(Continued.)

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No.	DATE.	SUBJECT.	Page.
26)	November 20, 1844..	William Stewart transmits Rochester's Petition for both Lots, states his purchase from Firth .....	110
27)	October 21, 1845..	T. Durie transmits Affidavits, &c., filed by Rochester and McLachlin .....	112
28)	June 20, 1844..	In above, 1st. Francis Laduceres Assignment to McLachlin .....	112
29)	April 28, 1838..	In above, 2nd. Firth's Bond to Rochester to transfer Deed if he can get it .....	112
30)	September 3, 1845..	In above, 3rd. Charles Henry, Affidavit that he leased house from Rochester .....	113
31)	do 6, do ..	In above, 4th. James Johnson, that Rochester has exercised ownership .....	114
32)	do 12, do ..	In above, 5th. Duncan Stewart, that Rochester made no improvements on 39, Concession A, Nepean .....	114
33)	do 16, do ..	In above, 6th. Donald McGregor, that Rochester made no improvements on 39, Concession A .....	114
34)	do do do ..	In above, 7th. James Skead, that Rochester made no improvements on 39, Concession A .....	115
35)	do 10, do ..	In above, 8th. George Rochester, that Laducere was Rochester's tenant .....	115
36)	do 26, do ..	In above, 9th. C. Waugh, that he got permission from Rochester to take stones of 39, Concession A, &c .....	116
37)	do do do ..	In above, 10th. F. Sparkes, same purport as preceding, but does not specify, 39, Concession A, separately .....	116
38)	do 27, do ..	In above, 11th. T. Burns, has had Rochester's permission to take Timber off the Broken Front .....	117
39)	October 3, do ..	In above, 12th. William McLachlin, retails sundry conversations with his brother .....	117
40)	do do do ..	In above, 13th. B. Rathwell, stating details which he considered to establish Rochester's claim .....	117
41)	do 4, do ..	In above, 14th. P. McGauvern, knew of Rochester giving permission to take Stones, &c .....	118
42)	do 6, do ..	In above, 15th. J. Perkins, states what he has heard .....	119
43)	do 9, do ..	In above, 16th. James Rochester, that Laducere built by Rochester's permission, &c., and paid Rent .....	119
44)	do do do ..	In above, 17th. C. T. Baines, employed by Rochester to prosecute his claim .....	120
45)	do —, 1841..	In above, 18th. Lease from Rochester to Banning .....	121
46)	February 12, 1846..	Report, Bouthillier's, recommends that Rochester be allowed to purchase Lot 39, in the 1st Concession, and that 39, Concession A, be sold at Auction .....	121
47)	do 4, do ..	Strong's Petition to reserve these Lots to endow Church of England, at Bytown .....	122
48)	do 12, do ..	Report, Bouthillier, on Strong's Petition, adverse .....	124
49)	do 17, do ..	Order in Council, directs that both Lots be sold separately to Rochester—39, in the 1st Concession, under the Clergy Reserve Regulations, and 39, in Concession A, under 25 Sec. Land Act .....	124
50)	March 24, do ..	McLachlin's Petition to be allowed to purchase 39, Concession A, at £10 per acre .....	124
51)	do 27, do ..	Lyman Perkins, Petition to purchase 39, Concession A, at £15 per acre .....	125
52)	May 21, do ..	O. R. Gowan, urging completion of sale to Rochester .....	126
53)	do 22, do ..	Report, Bouthillier's, that sale, under Order in Council 7th February, to Rochester, was withheld, on account of Strong's Memorial of 26rd March, (wanting), and proceedings in Legislative Assembly, but opposition being now withdrawn, as he is informed by Mr. Gowan, sale may be carried out .....	126

## (B.)—(Continued.)

No.	DATE.	SUBJECT.	Page.
55	June 20-22, 1846..	Order in Council, rescinds previous Order of 17th February,—denies that any right accrues through Firth,—orders 39, in 1st Concession to be sold at auction, Rochester to get value of his improvements thereon,—and that 39, Concession A, be surveyed into Town Lots, to suit the convenience of the inhabitants of Bytown, and also sold at auction.....	127
56	do 24, do ..	Rochester's Petition, praying for a re-consideration, and stating amount of improvements .....	127
57	July 1, do ..	Order in Council, that on account of extent of improvements thereon, Rochester be allowed to purchase 39, in 1st Concession, at new valuation by District Agent, and that survey and sale of 39, Concession A, be carried out as directed by Order in Council, 20-22 June .....	128
58	do 18, do ..	J. Durie, District Agent, reports former valuation of 39, 1st Concession by the inspectors to be sufficient .....	129
59	do 18, do ..	Instructions to R. Bell to Survey 39, Concession A, Nepean, into Town Lots, &c .....	129
60	August 19, do ..	Robert Bell, reports preliminary survey .....	130
61	do 24, do ..	Further instructions to Bell to complete survey .....	131
62	September 16, do ..	Robert Bell, reports having completed survey .....	132
63	July 18, do ..	Isaac Firth, that he sold both Lots to Rochester in 1834 .....	132
64	.....	Isaac Firth certifies that he sold both Lots to Rochester in 1836, (no date) .....	133
65	September 25, 1846..	Order in Council states grounds of Order in Council of 1st July,—recapitulates Firth's claim, and denies it in toto, to either Lot, but finds no objection to permitting Rochester to purchase, at full value, of the Town Lots when reported .....	133
66	December 8, 1847..	Order in Council, directs Town Lots, as valued by District Agent, to be advertised for sale .....	133
67	January 4, 1848..	Sale advertised of Town Lots (from Canada Gazette of 8th January, 1848) .....	134
68	do 17, do ..	Rochester's Petition, complains of Lots being advertised without intimation to him under Order in Council of 25th September, 1846—urges that the sale be suspended, &c .....	134
69	do 22, do ..	Report, Bouthillier's, refers to Order in Council of 25th September, 1846 .....	135
70	do 28, do ..	Order in Council, directs sale to be stayed till 1st May, following, permitting Rochester to purchase within that period, at the advertised prices of the Town Lots; failing which on his part, sale to proceed.....	136
71	February 8, do ..	William Stewart to J. A. MacDonald, Commissioner, on behalf of Rochester .....	136
72	do do do ..	Rochester's Petition, complaining of valuation of Town Lots being excessive, &c .....	137
73	do do do ..	In above—Philip Roberts, accuses his Co-Inspector Chitty, of corrupt conduct .....	138
74	April 20, do ..	J. H. Price to Rochester, intimates that sale to him, is suspended in consequence of Sparks claim & O. C. thereon .....	139
75	January 5, 1850..	A. J. Russell to John Durie, calls attention to deterioration of Lot 39, Concession A, by its remaining open to trespass .....	139
76	February 20, do ..	J. Durie calls Commissioners' attention to the subject .....	140
77	March 11, do ..	J. H. Price, Commissioner, to Durie, that O. C. of 28th January, 1848, may be carried out in favor of Rochester, for the part not claimed by Sparks .....	141
78	April 20, do ..	J. Durie to Rochester offering as above .....	141
79	June 20, do ..	Rochester to Durie, urges consideration of his former Petition .....	141
80	do 28, do ..	Durie to Commissioner, submits above reply and refers to value of the Lot as a farm being less than that of the Town Lots ....	142

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## (B.)—(Continued.)

No.	DATE.	SUBJECT.	Page.
81	February 3, 1852..	Malloch to Rochester, thinks case quite clear and offers assistance ..	148
82	do 21, do ..	Rochester again urging his case on the Commissioner, (with copy of reply, same No.) ..	148
83	July 23, do ..	Rochester's Petition, presented personally by himself and Malloch, again stating his case.....	144
84	do 28, do ..	Aumond and Egan, certify that 39, in Concession A, is occupied by Rochester with a House built, and ten or twelve acres of land cleared .....	146
85	.....	J. C. Tarbutt, Mem., shewing Departmental action on Lot 39, in the first Concession, and 39 in Concession A, to be the same as on Lots in any other Concessions lying contiguous.....	146
86	August 4, 1852..	Report Commissioner on Rochester's Petition, gives brief history of case, shewing the utmost conceded to this date, to be, permission to purchase the Town Lots at their full value.....	146
87	do 5-7, do ..	Order in Council, allowing Rochester to purchase the whole Lot at 50s. per acre, with interest from 1843.....	147
88	do 4, do ..	Rochester assigns joint interest to Malloch .....	148
89	do 9, do ..	Commissioner to Public Works Department, inquiring what reserves are necessary .....	149
90	do 11, do ..	Secretary P. W. replies, that no grant should be made, improvements being in contemplation .....	149
91	do 13, do ..	Malloch and Rochester, urging issue of Patent .....	149
92	do 18, do ..	Robert Bell, describing reservations indispensable for Public purposes.....	151
93	do do ..	Daniel McLachlin, M.P., that reservations are indispensable.....	152
94	do 19, do ..	Andrew Russell, Mem., on importance of Ottawa Navigation.....	152
95	do —, do ..	Imperial Order in Council, extract shewing that pre-emption could only be extended to Clergy Reserve occupants of the standing of five years previous to 1841 .....	153
96	do 24, do ..	Report by Commissioner, shews that no claim to pre-emption exists, that the Lot is required for public purposes and should be reserved .....	153
97	do 26, do ..	Petition of thirteen inhabitants of places on the Ottawa in favor of Rochester .....	156
98	do 30, do ..	Mr. Lee to Mr. Spragge, inquiring how certain Lots in Concession A, Nepean, are granted .....	157
99	do do do ..	Mr. Spragge in reply shewing that Lots in Concession A, are described separate and distinct .....	157
100	September 4, do ..	Petition of thirty-two Merchants of Bytown, in support of the Public Interests, that Reserves are indispensable, being themselves engaged in the lumber trade.....	158
101	do do do ..	Petition, Magistrates of Bytown, (ten) deprecating sale of the Lot at about £110, as a public wrong, the real value being not less than £5000, and urging indispensable reservations for public purposes .....	159
102	do 6, do ..	Petition, Corporation of Bytown, deprecating sale, and describing reservations indispensable for Public purposes .....	160
103	do 14, do ..	Rochester to Provincial Secretary, urging his claim .....	161
104	October 12, do ..	Malloch to Honorable Malcolm Cameron, urging claim and stating position of the case, and his suspicions, with inclosures ....	161
105	do 11, do ..	In above, 1st. E. Hawkins Affidavit, that he fenced, ploughed, and planted for Rochester, &c.....	163
106	do do do ..	In above, 2nd. Charles Heney, Affidavit that he occupied a house built by Rochester, &c .....	163
107	Feb. 4 & Mch. 27, '24	In above, 3rd. G. Hillier to Major Burke, two letters—Firth permitted to occupy .....	164

## (B.)—(Continued.)

No.	DATE.	SUBJECT.	Page.
108	April 9, 1824..	In above, 4th. Sir P. Maitland to Lord Dalhousie—Firth to occupy	164
109	October 25, 1852..	Clergy Reserve adjoining Richmond Landing. (Afterwards sent), 5th. Hugh Hamilton's Affidavit of what he heard	164
110	November 2, do ..	Mr. Carmichael say ..	165
111	do 9, do ..	Petition of William Lyon Mackenzie on behalf of the Estate of late Robert Randall (no copy kept, but 2nd Petition, 12th November, gives his case fully) ..	165
112	.....	Report, Supplementary on the further documents, in the Malloch and Rochester case ..	167
113	November 9, 1852..	Report, Extract Registry Office, Bytown, sale Rochester to Malloch, shewing the legal distinction between 1st Concession and Concession A, of Nepean ..	168
114	do do do ..	Report on Mackenzie's Petition, contrasting his Claim with Rochester and Malloch's ..	169
115	do 12, do ..	Report on Squatters' Petition, with Petition of 16th June, (the Report having been made out but not sent to Council at that time) ..	173
116	do do do ..	Petition of W. L. Mackenzie, entering more fully into details of Randall's case, referred immediately to Executive Council without further Report, (first Petition not copied, but his case is fully given in the above) ..	174
117	do 13, do ..	Petition, Mackenzie to be heard before the Executive Council ..	177
118	do 24, do ..	Report, on last Petition, suggesting the propriety of hearing Mr. Mackenzie ..	178
119	December 6, do ..	Order in Council, amending Order of 5th and 7th of August, and making reservations ..	179
120	do 15, do ..	Memorial (second) of Town Council of Bytown, expressing surprise at the Claims put forward being entertained, and praying for a part of the Lot for Public purposes of the Town, and shewing the Streets to be vested in the Corporation ..	179
121	do 13-14, do ..	Report on above, shewing that no sale had yet been made on Order in Council of 24th November, on account of a doubt of its legality ..	181
122	do 20, do ..	Order in Council amending former Order (received 16th) ..	182
123	do 24, do ..	till arrangements are made to prevent recourse being had upon the Government, in case of decision hereafter that the Streets are vested in the Corporation ..	182
124	do do do ..	Commissioner to Rochester intimating foregoing decision ..	183
125	do do do ..	Commissioner to R. W. Scott, Mayor of Bytown, intimating same ..	184
126	.....	Commissioner to Sparks, intimating same ..	184
127	January 7, 1853..	Commissioner to R. Cleary and others, intimating same ..	185
128	do do do ..	Malloch and Rochester, (Mr. Aumond endorsing,) assenting to the terms respecting Streets, but objecting to the chain and a half reservation ..	185
129	do 24, do ..	John Egan, M.P., thinks Mr. Rochester an honest man ..	187
130	.....	Report, refers to the above documents, and, against reopening the case for further concessions, quotes O. C. of 17th November, 1847, in the case of N. Macpherson ..	188
131	Jany. 29-31, 1853..	Nothing appears under this number in the manuscript ..	189
132	February 5, do ..	Order in Council, that Patent issue in accordance with Orders in Council of 24th November, and 20th December, 1852 ..	190
133	do 5, do ..	Malloch and Rochester, accepting terms of Order in Council, of 20th December, 1852 ..	190
		Attorney General Richards, that acceptance is in accordance with the Order in Council ..	190

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## (B.)—(Continued.)

No.	DATE.	SUBJECT.	Page.
134	February 7, 1853..	Malloch and Rochester protest against their acceptance of the 5th, as having been extorted from them, and accuse the Government of studied fraud, &c .....	191
135	April 5, do ..	Russell and Merrill Report, as directed by the Commissioner, whether reservations are necessary, and describe what they believe to be indispensable .....	192
136	do 25, do ..	E. Malloch, respecting trespass on the reservation, desires that Commission issue to County Judge to stop it .....	195

## No. 1.

To His Excellency FRANCIS GORE, Esquire, Lieutenant Governor of the Province of Upper Canada, &c., &c., &c.

IN COUNCIL.

The Petition of ROBERT RANDALL, of Cornwall, in the Eastern District of the Province of Upper Canada, Merchant;

HUMBLY SHEWETH:

That your Petitioner is desirous of Leasing Lot No. 39, in the first Concession or front of the Ottawa River, opposite to the Falls, known by the Shawyees, in the Township of Nepean, a short distance above the mouth of the River Reddau.

Your Petitioner therefore prays your Excellency will be pleased to order a Lease to be made out for said Lot, in the name of your Petitioner, agreeable to the existing regulations, and permit Darcy Boulton, of York, Esqr., to be his Attorney to receive said Lease, when the same shall be completed.

And your Petitioner will ever pray, &c.

INDORSED.—Copy, Robert Randall's Petition for a Lease for Lot No. 39, in the Town of Nepean, Oct. 5, 1807.

## No. 2.

Copy—Randall's Lease, Lot 39 in 1st Concession, and 39 Concession A, Nepean.

LEASE to ROBERT RANDALL, of the Town of Cornwall, in the County of Stormont, in the Eastern District, Merchant; all that parcel of Land in the Township of Nepean, in the County of Carleton, in the District of Johnstown, being the Clergy Reserve Lot Number 39, in the 1st Concession, with the Broken Lot No. 39, in front thereof, upon the Ottawa or, that is to say, Grand River; commencing in front upon the Ottawa or Grand River, at the North East angle of the said broken Lot No. 39; then South 16 degrees East 151 chains, more or less, to the allowance for Road between the rear of the said 1st Concession and Lot I

in the Concession B, granted to Christian Wallaser; then South 66 degrees West, 20 chains, more or less, to the limit between Lots Nos. 39 and 38; then North 16 degrees West, 125 chains, more or less, to the Grand or Ottawa River; then Easterly and Northerly along the water's edge with the stream to the place of beginning; containing 276 acres, more or less, with the allowance for Road between the broken front and 1st Concession: for which the sum of Thirteen shillings and nine pence of lawful money or 4 bushels and one-eighth of a bushel of wheat is the annual rent for the first seven years; Twenty-seven shillings and six pence or 8 bushels and one quarter of a bushel of wheat for the 2d 7 years, and 41s. 3d. or 12 bushels and three-eighths of a bushel of wheat for the residue of said term.

S.G.N. Fiat No. 669. Description. No. 682 Lease.

(Signed,) CHEWETT & RIDOUT,  
A. & S.

Order in Council, 23 Feby., 1809, under the administration of Lt. Gov. Gore.  
The Rent to commence from the next Qr. day after the date of the O.C.

S.G.O. 25 Feb. 1809.

C.O. No. 788. A.G.O. No. 669. 25 Feby. 1809.

### No. 3.

Mr. Heward to Mr. Randall, about Reserve Rent.

(Copy.)

YORK, 19th May, 1821.

Sir,—It does not appear that any rent has been paid on Clergy Reserve Lot No. 39, in the first Concession, and broken 39, in front upon the Ottawa or Grand River in the Township of Nepean, containing together about 276 acres leased to you in February, 1809. The rent thereon on the 25th March last, amounted to £11 13s. 10½d.

The Corporation for superintending and managing the Clergy Reserves have therefore directed me to request you to pay or cause to be paid to me forthwith, that amount as rent aforesaid, in order that the same may be entered in account, otherwise measures will immediately be taken to recover the same.

I have &c., &c.

(Signed,) S. HEWARD,  
Secretary and Receiver to the Corporation.

ROBERT RANDALL, Esq., &c., &c., &c.,  
Chippawa, N.D.

### No. 4.

Chief Justice Robinson to Mr. Secretary Cameron. *Fiat* for a Commission—Randall's Reserves Rent.

YORK, July 23rd, 1821.

Sir,—I have the honour to request that you will prepare a Commission under the Great Seal, in the usual form, to inquire whether the rents have been duly paid upon a Lease of Lot Number thirty-nine in the first Concession, and broken lot number

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Mr. Rand

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thirty-nine in front upon the Ottawa or Grand River in the Township of Nepean, containing 276 acres, a Clergy Reserve granted to Robert Randall in February, 1809. The said Commission to be directed to Hamilton Walker, and Adiel Sherwood, Esquires.

I have the honor, to be, Sir,

Your most obedient humble Servant,

JOHN B. ROBINSON,  
Attorney General.

To the Hon. D. CAMERON, Esq.,  
Secretary, &c., &c., &c.

Secretary's Office, York, U.C., 4th February, 1830.

I certify the foregoing to be a true copy of the Original *Fiat*, received at this office from the Attorney General, John Beverly Robinson, Esquire.

D. CAMERON,  
Secretary.

## No. 5.

Mr. Randall's Petition for a Renewal of his Lease of 39—1st Concession and 39, Concession A, Nepean.

(Copy.)

To His Excellency Sir JOHN COLBORNE, K.C.B., Lieutenant Governor of Upper Canada, and Major General of, in, and over His Majesty's Forces therein, &c. &c. &c.

The Petition of ROBERT RANDALL, humbly sheweth, that he received a Lease of Lot No. 39, being a Clergy Reserve in the 1st Concession, with the Broken Lot No. 39 in the front thereof, upon the Ottawa or Grand River, in Township of Nepean, in the County of Carlton, in the District of Johnstown, from the 25th day of March, 1809, for 21 years then next ensuing, paying the yearly rent in such Lease reserved.

Your Petitioner has lately applied to pay the rent due on the said Lease, and was then informed that the Clergy Corporation had made an entry that the said Lease was forfeited, and that the said Lot should be otherwise disposed of. That your Petitioner has reason to believe that no fiat has issued for any such fresh disposal of the Lot to the prejudice of your Petitioner, wherefore your Petitioner humbly prays that upon paying the Rent now due, he may have his lease renewed.

And your Petitioner, as in duty bound, will ever pray.

## No. 6.

(Copy.)

RICHMOND, 13th Nov., 1823.

Sir,—I have the honor to transmit the Petition of Andrew Berrie, late of the Royal Artillery, praying that an Acre of Land be granted him off Clergy Reserve Lot No. 39, adjoining the Richmond Landing, for the purpose of erecting a House of accommodation thereon. I beg to observe that this is one of the Lots

which His Lordship the Commander of the Forces had decided on reserving for public purposes, as appears by Captain Parker's letter of the 15th August last.

The Petitioner, since his settlement under this superintendence, has conducted himself in a highly respectable and industrious manner, and given most general satisfaction as an Inn-holder at the Landing; and should it be compatible with the views of His Lordship the Governor in Chief, I would beg to recommend favorable consideration of his prayer, holding in view that the place assigned him be situated on a road to be laid out in continuation of that at present in use across Lot No. 40.

I have, &c.,  
(Signed)

G. T. BURKE,  
Secretary and Stk.

Colonel COCKBURN, &c. &c. &c.

A true Copy.

JOHN PARKER,  
Capt. and Dy. A. Q.M.G.

Dy. Q.M. Gen.'s Office,  
Quebec, 3rd October.

### No. 7.

I certify that Mr. Isaac Firth has obtained thro' me the permission of His Excellency the Lieutenant Governor to take possession of and occupy Clergy Reserve Lot No. 39, 1st Concession from the Ottawa in the Township of Nepean.

(Signed,) GEORGE T. BURKE.

Richmond, 15th April, 1824.

### No. 8.

RICHMOND, 21st April, 1824.

Dear Sir,—In compliance with your desire, I enclose extracts from 2 letters which I have received from the Provincial Secretary at York relative to Clergy Lot No. 39, retained for Government purposes.

I also transmit a Certificate of your having Government permission to occupy the lot. I take this opportunity of enclosing one of my Addresses to the Freeholders, and beg to solicit Mr. Berrie's and your interest on the occasion. Your exertions will be the more necessary in order to meet those of a party in March, who seem desirous of dictating to the freeholders in the choice of your representation.

Very faithfully and obediently yours,  
G. T. BURKE.

P.S.—I have heard by the last post from Major Hillier, who says he shall answer me finally respecting the reserve, when he hears again from Quebec. Adding the latter extract, March 27.

We have now on hand, a supply of very choice Ale, but I fear the roads will be unfit to travel for some time.

G. T. B.

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Major Hillier to Capt. Whitmarsh, relative to a petition of Berrie's partner (Firth), concerning R. Randall's reserve, No. 39, Nepean. I shall not be able to give him a final reply on the subject of the Lease of the Clergy Reserve in Nepean until Major Elliot's report has been received and considered; but that I will not lose sight of it.

S. H.

Sir,—I have just received the enclosed note from Major Hillier in reply to the Petition I forwarded for you.

And remain,

Your obedient Servant,

H. WHITMARSH.

Mr. ISAAC FIRTH, Nepean, U.C.

ADDRESSED.—Mr. Isaac Firth, Nepean.

## No. 9.

Extracts from Letters addressed by Major Hillier to the Subscriber.

GOVERNMENT HOUSE,

York, February 5th, 1824.

"If Mr. Firth will forward to me a Petition for the lease of Clergy Reserve Lot  
"No. 39, I will give immediate attention to it; in the meantime, His Excellency  
"allows Mr. Firth to take possession of and occupy that Lot."

(Signed,) H. HILLIER.

## No. 10.

GOVERNMENT HOUSE,

York, March 27th, 1824.

In the meantime, I think there can be no objection to Mr. Firth's entering on possession of the Reserve, which may be important to him.

(Signed,) H. HILLIER.

Richmond, 21st April, 1824.

(Signed,) G. T. BURKE.

## No. 11.

Sir John Colborne's Reply to Mr. Randall's Petition.

GOVERNMENT HOUSE, (YORK,) 6th February, 1830.

Sir,—I am directed by the Lieutenant Governor to acquaint you, in reply to your Memorial, that he finds that a Fiat did issue for the disposition of the Lot in

question, and also that you were informed of the arrangement. Copies of the Fiat and the notification transmitted to you on that subject are inclosed. I am also to observe that I have been desired to ascertain from the officer, said to be in charge of the Lot 39, 1st Concession, Nepean, at Bytown, by whose authority it was directed to be taken out of the hands of the Clergy Corporation; and if it should not be required for the public service, His Excellency thinks that there will be no objection to your lease being renewed for the usual term.

I have the honor to be, Sir,

Your most obedient humble Servant,

Z. MUDGE.

ROBERT RANDALL, Esq., M.P.P.

## No. 12.

Randall's Petition of 1833.—Reserve wanted for Public Purposes.

To His Excellency Sir JOHN COLBORNE, K.C.B., Lieutenant Governor of the Province of Upper Canada, Major General Commanding His Majesty's Forces therein, &c., &c., &c.

IN COUNCIL.

The Petition of ROBERT RANDALL, of the Town of York;

HUMBLY SHEWETH:

That the Clergy Reserve Lot No. 39 in the 1st Concession, with the broken Lot No 39 in front thereof, upon the Ottawa or Grand River, in the Township of Nepean, was leased to your Petitioner by Letters Patent, in the year 1809. The lease having expired, your Petitioner prays your Excellency will be pleased to grant him a renewal thereof, on payment of the arrears of rent.

And your Petitioner will ever pray.

(Signed,) ROBERT RANDALL.

YORK, 3d January, 1833.

## No. 13.

INDORSED.—In Council, 24th April, 1833.—Not recommended, as the land in question was regularly forfeited under a commission, and is now indispensably necessary to the public service.

(Signed,) JOHN STRACHAN,  
P.C.S.C.

GOVERNMENT HOUSE, 7th January, 1833.

Referred to the Honorable the Executive Council.

By command.

(Signed,) WM. ROWAN.

Communicated 30th April, 1833.

See Petition of Isaac Firth, read in Council, 3d February, 1834.

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IN COUNCIL, 24th April, 1833.

Read the Petition of Robert Randall, Esquire, for a renewal of a Lease of the Clergy Reserve Lot No. 39, in the 1st Concession, with the broken front, in the Township of Nepean.

Not granted, as the Land in question was regularly forfeited under a Commission, and is now indispensably necessary to the public service.

JOHN BEIKIE,  
Clerk Executive Council.

## No. 14.

Col. G. T. Burke to Col. Cockburn.—Atty. Gen. Boulton to Capt. Bolton.  
(Copy.)

ATTORNEY GENERAL'S OFFICE,  
York, 2nd April, 1833.

Sir,—In compliance with the request made in your letter of the 18th ultimo, I have the honor to enclose you the accompanying statement, which, I hope, will afford you all the information you require. The Lease from Colonel By to Mr. Firth is a mere nullity.

I have, &c. &c. &c.

(Signed,) H. S. BOULTON,  
Attorney General.

Captain BOLTON,  
Senior Royal Engineer, Rideau Canal.

A true Copy.

WILLIAM CLEGG,  
Clerk Rideau Canal.

## No. 15.

(Copy.)

COMMISSIONER OF CROWN LANDS OFFICE,  
York, 21st August, 1833.

I beg to refer you to Colonel By's letter of the 16th February, 1830, on the Report of the Honorable the Executive Council, herewith transmitted, by which you will observe that the Lot the Petitioner is desirous of obtaining is required for public purposes.

(Signed,) PETER ROBINSON.

## No. 16.

GOVERNMENT HOUSE, York, 22nd August, 1833.

Sir,—With reference to your Petition of the —, I am directed by the Lieut.

Governor to transmit to you the annexed copy of the Report from the Commissioner of Crown Lands.

The Certificate which accompanied your Petition is returned herewith.  
I am, Sir,

Your obedient Servant,

WM. ROWAN.

Mr. ISAAC FIRTH, at Mr. Talbot's, Land Agent, York.

## No. 17.

Mr. Talbot's (Land Agent) Explanation of Refusal of Lease to Firth.

YORK, 22nd August, 1833.

Sir,—Your Petition obtained an early consideration, and reply, though not satisfactory as we could wish, as will be seen by the annexed Report, which states, that in consequence, or rather upon reference, to a Letter from Colonel By in February, 1830, and the Report of the Executive Council, the Lot was required for public purposes, and, in all probability, will be withheld from sale or lease until such time as a Certificate or Declaration to the contrary be made by those whose province it is to decide.

Colonel By, I suppose, is not within reach. Should you feel disposed to apply to him upon the subject,—that is, to procure from him a written Certificate, addressed to the Commissioner of Crown Lands, stating that the Lot in question would not now be required for public purposes—if you were satisfied from its situation it would not be required, and that it was important that you should have it—you might apply for a lease of occupation for the time when such declaration would be made, or for the period when it is required for public services.

And am, Sir,

Your obedient humble Servant,

JOS. TALBOT.

Mr. ISAAC FIRTH, Bytown.

## No. 18.

BYTOWN, 8th November, 1833.

I hereby certify that I was authorized by the Earl of Dalhousie, in the year 1823, to inform Mr. Isaac Firth that he had His Excellency's permission to occupy a part of the Clergy Reserve No. 39, 1st Concession, Nepean.

(Signed,)

G. A. ELIOT,

Lt. Col., M.B.

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**No. 19.**

To His Excellency Sir JOHN COLBORNE, Knight Commander of the most Honorable Military Order of the Bath, &c. &c. &c.

The Petition of ISAAC FIRTH, most

HUMBLY SHEWETH :

That Petitioner was put in possession of part of Clergy Lot No. 39, first Concession on the Ottawa in the Township of Nepean, in the autumn of 1823, by Major Elliot (he being here at that time), but Petitioner not having obtained any document to that effect, wrote to Mr. Secretary Hillier on the subject and received for answer, that "if he would forward a Petition he would give immediate attention to it, and at the same time His Excellency allows Mr. Firth to take possession of, and occupy that Lot."

That Petitioner having forwarded the Petition, and had for answer that a final answer could not be given until Major Elliot's report had been received.

That untoward circumstances have driven your Petitioner from his home, near the Union Bridge. He therefore prays your Excellency to grant him so long a lease of said Lot as may indemnify him for building a house and barn, and other necessary buildings; having already made fourteen acres of excellent improvement.

And Petitioner, as in duty bound, will ever pray.

Bytown, November, 1833.

ISAAC FIRTH.

ADDRESSED.—To His Excellency Sir John Colborne.

**No. 20.**

EXECUTIVE COUNCIL OFFICE,

YORK, 6 February, 1834.

Sir,—Your petition for a Lease of part of Clergy Reserve Lot No. 39, in the First Concession on the Ottawa River in the Township of Nepean, was read in Council on the 3rd instant, and the prayer not granted.

I have the honor to be, Sir,

Your obedient Servant,

(Signed,)

JOHN BEAKIE,

Clerk Executive Council.

Mr. ISAAC FIRTH, Bytown.

**No. 21.**

Copy of a Report on a Petition of Isaac Firth, to lease or purchase 30, in the First Concession Nepean.

CROWN LAND OFFICE,

11th October, 1838.

The Petitioner, Isaac Firth, has no legal title to occupy the lot of land prayed for, he seems, however, to have settled upon it by the authority of the Governor

General and the Lieut. Governor, Sir P. Maitland; he has not ever had grant of the land or right of pre-emption, and if the lot being a Clergy Reserve should be wanting for ecclesiastical purposes, his claim cannot be considered as standing in the way of its appropriation further than his occupation may have improved the value of the land which does not seem probable, as he is represented to have cut timber of considerable value from the lot; the utmost extent of his title seems to be a verbal permission to occupy, which, even, if it had been formal was liable to be determined at the will of the Crown. In the year 1809, a Lease appears to have been granted to Robert Randall which has, however, expired, and the Lease contained no clause of renewal, there seems therefore no difficulty in the way of disposal of the Lot according to your Excellency's pleasure.

(Signed,)

R. B. SULLIVAN.

## No. 22.

HOUSE OF ASSEMBLY, 11th December, 1839.

Mr. J. ROCHESTER.

Dear Sir,—On my arrival here, I put in your claim to the Clergy Reserve that you are in possession of.

This morning I called at the Council Office; they shewed me the Rev. Mr. Strong's Petition for the said Lot, sent in on 38. I was informed that there would not be anything farther done in the matter until the Clergy Reserve question was settled.

Yours truly,

(Signed,)

T. MCKAY.

## No. 23.

TORONTO, 28th December, 1840.

Sir,—I duly received yours of 2nd current, and regret the delay that has taken place in search of your Petition. After making every inquiry in the Executive Council, and other Offices without success, I wrote to the Government, to which they state in reply "That the Petition of Isaac Firth, concerning which you make "inquiry, does not appear to have been received at this Office." Upon the reference given me to Messrs. Baines and Lee, they both appear to have some faint recollection of such a petition, but on a diligent search being made by these gentlemen, no trace can be found of such a document having been filed in any of the public Offices, and of course not reported on.

I do not see you can do otherwise than Petition again, stating fully the facts, and producing affidavits of the clearing and improvements made on the lands, as also Major Bolton's certificate of the said lot not being required for canal purposes. It may be well that no time is lost in bringing your claim before the Council, to await the result, depending on the future instructions (as to the sale of Clergy Reserves) that may be received from the Home Government, the Council having at present no power vested in them to decide on claims against Clergy Reserves. I find Mr. Strong, as you mention, petitions for said Lot for a Glebe, but his request was not entertained. Pray who are Randall and Barrie, whose names are noted on the Books of the Commissioner of Crown Lands as having, or having had some

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Extract

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claims on the Lot. This must be clearly shewn to insure you of your claim being granted.

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information I shall exert  
more for your interest

I am Sir, your most ob  
(Signed,) ANDREW TOD

} Torn off the Original.

Mr. JAMES FIRTH, Nepean.

N.B.—The Hon. R. B. Sullivan, is Commissioner of Crown and Clergy Reserves.  
(Signed,) A. T.

## No. 24.

Extract from Return of Inspection by Messrs. John Chitty and Philip Roberts, on Oath, 1844.

No. of Lot	Concession.	No. of Acres.	If occupied, and by Whom.	No. of Acres cleared.	Quality of Soil.	Will occupant purchase, and at what price?	Nearest Mill.	No. of Families in Conces- sion.	What would the Lot be now worth per Acre, if it had never been improved?	Remarks.
39 {	A Ottawa }	76	Daniel McLachlan.	3	Good...	s. 35	+	....	s. 40	Recommend that D. Mc- Lachlan do pay to Oziah Banning £25, and to Louis Dorin £5, for two Shanties on Lot 39, A.
39 {	1st Ottawa }	200	John Rochester ..	30	Good...	80	+	....	50	.....

## No. 25.

(Copy.)

Bytown, 22nd November, 1844.

Sir,—Having differed in opinion with my Colleague, Mr. John Chitty, on one point, in the course of our inspection of Clergy Reserves, and in obedience with our instructions, I have the honor to annex for your information, my reasons for so doing. It appeared to me by document laid before us that Lot 39, in the 1st Concession, and Lot 39 on the broken front of the Ottawa, in the Township of Nepean, had been occupied for many years by a man of the name of Isaac Firth, with the sanction of the Government,—said Firth, in the year 1838, sold his improvements in said Lot to a Mr. John Rochester, for the sum of sixty pounds Currency; and on the faith of that agreement said Rochester built a handsome stone dwelling

house, and made other improvements- it also appears by receipts he produced, that he had regularly paid the District Taxes on both Lots.

Those with other facts which have come to my knowledge, are the reasons on which I ground my opinion that Mr. Rochester has a prior right to have his name registered for Lot 39, on the Broken Front, on the Ottawa, 76 acres; and not that of a Mr. Daniel McLachlin, who alleges he purchased a house from a Frenchman on the 17th last June, for the sum of fifteen pounds Currency; the said house and premises, I am credibly informed, was not the property of the said Frenchman, but merely rented to him by said Rochester, of which I believe most satisfactory proof can be given.

(Signed,)

PHILIP ROBERTS,  
Late I.C.R.

Honorable Commissioner of Crown Lands.

## No. 26.

LEGISLATIVE ASSEMBLY,  
November 29th, 1844.

Dear Sir,—Accompanying this I beg to place in your hands a memorial from Mr. John Rochester, of Bytown, in reference to Lot 39 and Broken Front, near Bytown, in the Township of Nepean.

I can vouch for the fact, that Mr. Rochester always had possession of both since his purchase from Isaac Firth, and that he is in possession of a regular Bond and assignment of it, which will be forthcoming, if any attempt to doubt or disturb his possession.

I have the honor to be, Sir,  
Your most obedient Servant,

(Signed,) WILLIAM STEWART, M.P.P.

The Honorable D. B. PAPINEAU,  
Commissioner Crown Lands, &c. &c. &c.

## No. 27.

4th December, 1844.

To the Honorable DENIS B. PAPINEAU, Commissioner of Crown Lands,  
&c. &c. &c.

The Petition of JOHN ROCHESTER, of Bytown, in the District of Dalhousie, most  
HUMBLY SHEWETH:

That your Petitioner, in the year 1836, purchased from Mr. Isaac Firth, of Bytown, Lot No. 39 1st Concession, and 39 on the Broken Front, in the Township of Nepean, for which he paid £60 Currency, which are Clergy Reserves. The said Lots were granted by his Excellency Sir P. Maitland to Mr. Firth, in 1824, who was from time to time assured by Major Hillier, the Secretary to the then Governor, that a patent might be expected for the same.

That the said Isaac Firth made repeated subsequent applications to the Crown Land Department, accompanied by the necessary documents for a Patent, who was on every occasion encouraged to believe he would receive one, but from the

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difficulties which arose respecting the settlement of the Clergy Reserves, it was deferred.

That your Petitioner, on the faith of those assurances from the Government, has incurred a great expense in erecting dwelling houses, and other buildings, both upon the broken front, and on the lot where he now resides with his family,—and had never for a moment entertained a single doubt of his remaining in the peaceable possession thereof.

That your Petitioner has reason to believe that one of the Commissioners who inspected the Lots, from a personal and sinister motive, wishes to have the Broken Front detached from the other part of the land, of which it constitutes an integral part. Your Petitioner will be able to prove the assertions above alluded to, by the clearest testimony. In the event of your Petitioner losing the Broken Front, he would be completely cut off from his Water Privileges, thus rendering the remainder of comparatively little value, there being on the whole not more than 25 acres of good land.

Your Petitioner, therefore, most humbly begs that Your Honor will be graciously pleased not to sanction the dissevering of said Broken Front from the lot which it originally formed and still continues to form an integral part, until a fair and open investigation takes place.

Your Petitioner makes this application to Your Honor, knowing from universal report that Your motives are just and equitable, wishing to see justice done in all cases that come before you.

All which is respectfully submitted,

(Signed,)

JOHN ROCHESTER.

## No. 28.

DALHOUSIE DISTRICT AGENCY, 21st October, 1845.

Sir,—I beg to inclose Affidavits, &c., &c., in support of Mr. John Rochester's claim to Broken Front 39, in Concession A, on the Ottawa, and others in support of Mr. Dan. McLaughlin's.

Of the two, I consider Mr. Rochester's to be the most substantial.

Mr. McLaughlin has, since he lodged these papers in this office, given up all claim to the right of pre-emption; but stated to me his intention of proving that Mr. Rochester neither has a claim to this right; and, at the same time, offered £10 per acre for the Lot.

I have to inform you that since the opening day of sale, the Rev. S. S. Strong, of Bytown, has made application for and forbid the sale of this Lot, in behalf of the Church of England, and Thos. Keefer on behalf of the Board of Works.

Mr. Rochester is willing to give up any part of the Lot that may be required for the Government Slide, presuming that the whole will not be deemed necessary for that purpose.

I have the honor to be, Sir,

Your most obedient Servant,

(Signed,) J. DURIE.

T. BOUTHILLIER, Esquire, &c., &c., &c.

## No. 29.

**T**HIS Indenture, made the seventeenth day of June, in the year of our Lord, One thousand eight hundred and forty-four, at Bytown, in the District of Dalhousie, in the Province of Canada, between Francis Laducer, of the Township of Nepean, in the District and Province aforesaid, labourer, of the one part; and Daniel McLachlin, of Bytown aforesaid, Gentleman, of the other part; witnesseth; That the said Francis Laducer, for and in consideration of the sum of fifteen pounds of lawful money of the said Province to him in hand paid by the said Daniel McLachlin, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released and for ever quitted claim, and by these presents doth grant, bargain, sell, remise, release and for ever quit claim unto the said Daniel McLachlin, his heirs and assigns for ever, all the estate, right, title, interests, claim, property, and demand whatsoever, either at law or in equity, of him the said Francis Laducer of, in, to, or out of all and singular that certain parcel or tract of land and premises, situated and being in the Township of Nepean aforesaid, and commonly known as Lot number Thirty-nine in Concession A, Ottawa, front of the said Township of Nepean. Together with all houses, out-houses, woods and waters thereon erected, lying and being, and all and singular the appurtenances thereunto belonging.

To have and to hold the same unto the said Daniel McLachlin, his heirs and assigns, to the sole and proper use, benefit and behoof of the said Daniel McLachlin, his heirs and assigns for ever.

In witness whereof, the parties have hereunto set their hands and seals the day and year first herein written, and in the seventh year of Her Majesty's Reign.

(Signed,) FRANCIS <sup>his</sup> LADUCER, [L.S.]

(Signed,) DANIEL <sup>mark.</sup> McLACHLIN, [L.S.]

Signed, sealed and delivered in presence of

(Signed,) JOHN SCOTT.

## No. 30.

**K**NOW all men by these presents, that I, Isaac Firth, of the Town of Bytown, in the Province of Upper Canada, Gentleman, am held and firmly bound unto John Rochester, of the Township of Nepean, in the Province aforesaid, in the sum of one hundred pounds of good and lawful money of the said Province, to be paid to the said John Rochester, or to his certain Attorney, Executors, Administrators, or Assigns, for which payment well and truly to be made, I bind myself, my Heirs, Executors, and Administrators, for the whole and every part thereof firmly by these presents, sealed with my seal, dated this twenty-eighth day of April, in the year of our Lord, one thousand eight hundred and thirty-eight.

The condition of this obligation is such,—That if the above bounden Isaac Firth do appoint and continue John Rochester, of the Township of Nepean, in the Province of Upper Canada, his true and lawful Attorney, to manage the Estate of him, the said Isaac Firth, consisting of Lot number thirty-nine and the Broken Front, in the first Concession of Nepean, on the Ottawa front, and to give him possession of the same, and all the right, title and interest which he, the said Isaac Firth, has, or may have, to the said premises, and to give and allow to the said John Rochester all the profits and emoluments arising therefrom; and further, the

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said Isaac Firth binds himself to use all due diligence, at the costs and charges of the said John Rochester, to procure a Deed from the Government of the said Lot, and to execute a transfer Deed of the same, if the original Deed from the Crown can be obtained, and to do and execute any reasonable act or thing for the better selling of the said Lot to the said John Rochester that he or his Counsel learned in the Law may think necessary and proper. If the aforesaid Isaac Firth do well and truly keep and perform the aforesaid several undertakings, then this obligation to be null and void, otherwise to remain in full force and effect.

(Signed,) ISAAC FIRTH. [L.S.]

Signed, sealed and delivered in presence of

(Signed,) JOHN McGRANES.

DISTRICT OF DALHOUSIE, } JOHN McGRANES, of Bytown, Township of  
to wit : Nepean, County of Carleton, Dalhousie District, and  
Province of Canada, Merchant, maketh oath, and saith; That he, this Deponent, was  
personally present and did see Isaac Firth, of the place aforesaid, Gentleman, duly  
assign, transfer, make over unto John Rochester, of the place last aforesaid,  
Gentleman, all his right, title, claim and interest of the within mentioned land and  
premises, and that he, this Deponent, is a subscribing witness thereto.

(Signed,) JOHN McGRANES.

Sworn before me at Bytown, in said District of Dalhousie, this third day of  
September, 1845.

(Signed,) CHARLES T. BAINES,  
Commissioner for taking Affidavits  
in Q.B., Dalhousie District.

### No. 31.

DISTRICT OF DALHOUSIE, } CHARLES HENEY, of Bytown, Township of Na-  
to wit : pean, County of Carleton, Dalhousie District,  
maketh oath and saith; That he, this deponent, about seven years since from last  
May, leased a house from John Rochester, of the Township, County, District and  
aforesaid Province, Gentleman, situate in the aforesaid place, on the rear of the  
broken front of Clergy lot number thirty-nine, then and still in the possession of  
the said John Rochester.

This deponent further saith, that about the same period he was going over Poo-  
ley's Bridge, close to the aforesaid premises, he heard a conversation between the  
said John Rochester and one Francis Ladusare, to this effect: the said Rochester  
inquired of Ladusare what he would allow him as landlord for the house he then  
was living in? his "Ladusare's" answer was, that he did not know, but that they  
finally agreed for twenty-five shillings yearly.

This deponent further saith, that about two years back, he, this deponent, asked  
the said Ladusare for a few loads of manure, who answered that the said John Ro-  
chester was to have the same instead of rent.

(Signed,) CHARLES HENEY.

Sworn before me, at Bytown, in the said District, this 3rd day of September, 1845.

(Signed,) CHARLES T. BAINES,  
Commissioner for obtaining affidavits  
in Q.B., Dalhousie District.

### No. 32.

DISTRICT OF DALHOUSIE, }  
to wit:

JAMES JOHNSTON, of Bytown, Esq., M.P.P. for the County of Carleton, maketh oath, and saith; That he has been a resident of Bytown since the fall of 1827, (unless his absence on business, not exceeding three months at any one time,) and is aware that John Rochester, now in possession of Lot No. 39, in the first Concession of Nepean, has exercised the ownership over said Lot and broken front; and this deponent further saith, that he had permission many years back to cut some small cedars for fencing from the said John Rochester; and this deponent is of opinion that Mr. Daniel McLachlin is actuated by bad feelings, and prompted by one more designing than himself.

(Signed,) JAMES JOHNSTON.

Sworn before me, this sixth day of September, in the year 1845.

(Signed,) E. J. HUFLULE,  
A Commissioner for taking affidavits in  
Q.B. in said District.

### No. 33.

DUNCAN STEWART, of Bytown, in the District of Dalhousie, Carpenter, maketh oath and saith; That about nine years ago he assisted Daniel McLachlin, of Bytown, aforesaid, Miller and Lumber Merchant, to build a Lime Kiln upon Clergy Reserve Lot No. thirty-nine, in Concession A, of the Township of Nepean, Ottawa Front. This Deponent further saith that he has for about nine years resided in the vicinity of the said Lot, and that he is not aware, nor does he know that John Rochester of Nepean aforesaid, Yeoman, has made any improvements upon the said Lot.

(Signed,) DUNCAN STEWART.

Sworn before me at Bytown aforesaid, in the District of Dalhousie aforesaid, this 12th September, 1845.

(Signed,) JOHN CHITTY, J.P.

### No. 34.

DISTRICT OF DALHOUSIE, }  
to wit:

DONALD MCGREGOR, of Bytown, in the said District, Miller, maketh oath and saith; That he has been in the employ of Daniel McLachlin, of Bytown aforesaid, Miller and Lumber Merchant, for the last seven years, and that he knows that the said Daniel McLach-

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lin has, during that time, from time to time, burnt lime upon Clergy Reserve Lot, No. thirty-nine, in Concession A, Ottawa front, of the Township of Nepean, in the said District; and that the said Daniel McLachlin has generally, during that period, occupied the said Lot by placing Lumber on it. This Deponent further saith, that he is not aware nor does he know that John Rochester, of Nepean aforesaid, Yeoman, has made any improvements upon the said Lot or ever was in the possession of the same. This Deponent further saith, that the said Daniel McLachlin erected some Buildings upon the said Lot for the use of his Mill; but finding them rather inconveniently distant from his Mill, he removed the same nearer to it.

(Signed,) DONALD MCGREGOR.

Sworn before me at Bytown, in the District of Dalhousie, this 6th September, 1845.

(Signed,) JOHN CHITTY, J.P.

### No. 35.

DISTRICT OF DALHOUSIE, } JAMES SKEAD, of Bytown, in the said District,  
to wit: Yeoman, maketh oath and saith; That he is acquaint-  
ed with the Clergy Lot Number thirty-nine, in Concession A, in the Township of  
Nepean, Ottawa Front, in the said District, for the last seven years. That he  
knows that Daniel McLachlin, of Bytown aforesaid, Miller and Lumber Merchant,  
has burnt lime on the said Lot, and used the same for the purpose of placing  
Timber thereon for some years back. This Deponent further says, that he does not  
know, nor does he believe, that John Rochester, of Nepean aforesaid, Yeoman, has  
made any improvements whatever upon the said Lot, or ever was in the actual  
occupation thereof.

(Signed,) J. SKEAD.

Sworn before me, at Bytown, in the District of Dalhousie, this 16th September, 1845.

(Signed,) JOHN CHITTY, J.P.

### No. 36.

DISTRICT OF DALHOUSIE, } GEORGE ROCHESTER, of the Township of  
to wit: McNab, in the Bathurst District, and Province of  
Canada, Merchant, maketh oath and saith, that Francis Ladusare, of the Township  
of Nepean, Dalhousie District, and aforesaid Province, Yeoman, late in the Fall in  
the year of our Lord one thousand eight hundred and forty, worked for this  
Deponent; that wages to the amount of between fifteen and twenty shillings,  
Halifax currency, became due to the said Francis Ladusare from the said George  
Rochester for said work; that the said Francis Ladusare agreed that the said sum  
should be placed to his credit for Rent due to John Rochester, the elder, of the said  
Township of Nepean, District of Dalhousie, and aforesaid Province, Gentleman, for  
House and Premises erected upon the Broken Front of Lot thirty-nine in the first  
Concession of the Township of Nepean, Dalhousie District, and Province aforesaid,  
then, and long before, and ever since, in the possession of the said John Rochester,  
the elder.

(Signed,) GEORGE ROCHESTER.

Sworn before me, at Bytown, in said District of Dalhousie, this 19th day of September, 1845.

(Signed,) CHARLES T. BAINES,  
Commissioner for taking Affidavits,  
in the Queen's Bench, Dalhousie District.

### No. 37.

DISTRICT OF DALHOUSIE, } CALDWELL WAUGH, of Bytown, maketh  
to wit: } oath, and saith; That he is and has been Clerk  
and Broker for N. Sparks upwards of nine years, and in course of business had  
frequent opportunities of knowing much of Mr. John Rochester's affairs respecting  
his locality on Lot number 39 and the broken front on the first Concession of Ne-  
pean, in the County of Carleton; and from documents seen in the possession of the  
said John Rochester, (and some years back) deponent saith, that by his request  
he did once if not oftener write to some person officially connected with the Crown  
Timber Office in Toronto, (the name now disremembered,) respecting the said  
property, and to know when he might expect a patent for the same; and for fur-  
ther information how he was to proceed to secure his title; and furthermore, depo-  
nent saith, that he knew of N. Sparks' men having taken stone frequently off the  
said broken front by the alone permission of the said John Rochester, and deponent  
never knew of any other person or persons attempting to work or to take any  
property off said lot or broken front, without permission of the said John Roches-  
ter, but has lately heard that a plan has been concocted to defeat the said Rochester  
of his just claim by pre-emption, and that one Daniel McLachlin is the officiating  
organ in this unprincipled transaction.

(Signed,) CALDWELL WAUGH.

Sworn before me, at Bytown, in said District, this 26th day of September, 1845.

(Signed,) CHARLES T. BAINES,  
Commissioner for taking Affidavits,  
Q.B., Dalhousie District.

### No. 38.

DISTRICT OF DALHOUSIE, } FREDERICK SPARKS, of Bytown, Foreman  
to wit: } to N. Sparks, Esquire, maketh oath, and saith;  
That he has been in the employ of said N. Sparks these 17 years, and understood  
that a number of years since, John Rochester did purchase from Isaac Firth his  
interest and claim to Lot number 39 and the broken front on the first Concession  
of Nepean, in the County of Carleton, and has still since that period considered  
that the said John Rochester was the only person in possession of the same; and  
furthermore, deponent saith, that at numerous times was desired by his employer  
to ask permission from the said John Rochester to take timber and stone of the  
same, and did often get permission, and at other times was refused, as the said Ro-  
chester was careful the ground should not be too much broken into; and deponent  
furthermore saith, that until lately he never heard of any person putting in a claim  
for the same; and deponent furthermore saith, that never for himself or his em-  
ployer did he ask permission for any privilege there but from the said John Ro-

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chester, considering he was the only person authorised to give or refuse, he having made buildings and improvements thereon, and has frequently been on the one he built for Charles Heney, on the broken front.

(Signed,) FREDERICK SPARKS.

Sworn before me, at Bytown, in said District of Dalhousie, this 26th day of September, 1845.

(Signed,) CHARLES T. BAINES,  
Commissioner for taking Affidavits,  
Q.B., Dalhousie District.

### No. 39.

DISTRICT OF DALHOUSIE, }  
to wit : } PERSONALLY appeared John Burns, who maketh oath, and saith, that Deponent has been residing in Bytown and its vicinity these eighteen years, and is intimately acquainted with Mr. John Rochester, and also knew Mr. Isaac Firth when in possession of Lot No. 39 and the Broken Front in the first Concession of Nepean, and did afterwards understand that the said John Rochester bought his right and title to the same for the sum of £60 currency; and Deponent furthermore saith, that he has asked and received permission from the said John Rochester to take Timber off the said Broken Front, and to Deponent's knowledge knows of others obtaining the like liberty, and unhesitatingly declares he considered he was the only person having possession of the same Broken Front, nor did Deponent ever hear until lately that any other person did presume to have the least claim on the same, as it was generally called and known by the name of Rochester's Lot.

(Signed,) JOHN BURNS.

Sworn before me, at Bytown, in the said District of Dalhousie, the 27th day of September, 1845.

(Signed,) CHARLES T. BAINES,  
Commissioner for taking Affidavits,  
the Queen's Bench, Dalhousie District.

### No. 40.

[Nothing appears under this number in the manuscript.]

### No. 41.

DISTRICT OF DALHOUSIE, }  
to wit : } BENJAMIN RATHWELL, of Gloucester, maketh oath and saith; That late in the fall of the year 1835, or early in 1836, he was requested by Mr. John Rochester (who had then purchased Mr. Isaac Firth's interest on lot No. 39, and the Broken front on the first Concession of Nepean) to accompany him to the house of one Francis Hardy, to bargain

with him for the surrender of a lease that he had previously obtained for said lot and Broken front from the said Isaac Firth, and that the said John Rochester did pay the said Francis Hardy the sum of Ten pounds currency, to the best of Deponent's recollection, for the surrendering up the lease and any further claim he might have on said premises; and Deponent furthermore saith that he got permission from the said John Rochester, at an after period, to take some pieces of Timber and Stone off the said lot and Broken front, and knows of John Burrous, of Bytown, to get permission from said John Rochester, and did get timber also; and Deponent furthermore saith, that since the time of John Rochester's purchasing from Isaac Firth, he never entertained the least idea that any person or persons (the Government excepted) had or could claim any right or title to the said lot or Broken front, but Deponent furthermore saith that it was with amazement and astonishment he heard lately that Mr. Daniel McLaughlin, of Bytown, has put in a claim in opposition to the said John Rochester, and from Deponent's knowledge of all the circumstances connected with this transaction, verily believes and is of opinion that the said Daniel McLaughlin's claim is founded on impure and ambitious motives, and ought not to receive any notice from impartial and upright men.

(Signed,) BENJAMIN RATHWELL.

Sworn before me at Bytown, in the District of Dalhousie, this 3rd day of October, in the year of our Lord, 1845.

(Signed,) E. BILLINGS,  
A Commissioner for taking Affidavits in the  
Queen's Bench, in the Dalhousie District.

## No. 42.

DISTRICT OF DALHOUSIE, } ROBERT MCGOVERN, of Bytown, maketh oath  
to wit : and saith; That he is a resident of Bytown these last  
8 years, and is aware of Mr. John Rochester being in possession of Lot No. 39, and  
the Broken Front in the first Concession of Nepean, and this Deponent furthermore  
saith, that to his own knowledge numerous individuals got permission from the said  
John Rochester to take timber, also flags and stone off the same, and to use owner-  
ship over said lot and Broken Front, and at times complained heavily on some who  
made holes and done the land injury contrary to his instructions; and Deponent  
furthermore saith that he is well acquainted with one François Laduceure, who built  
a house on said Broken Front, and always since then understood he was a tenant of  
John Rochester's; and Deponent furthermore saith, that not more than 4 or 5 weeks  
since, the said François Laduceure told Deponent that he got permission to build  
from said Rochester, and that he had paid him rent for it, and this Deponent further  
saith, that he knew of the said John Rochester to build a house for one Charles  
Heaney in said Broken Front, and at a little time after his leaving said premises,  
said Charles Heaney told Deponent that he had settled up all his rent, and that his  
last payment made to John Rochester was either four dollars or four pounds, De-  
ponent cannot recollect which sum; and furthermore, Deponent saith, that he never  
understood or heard of any other person or persons having any claim to said lot or  
Broken Front until after the inspectors had valued the Clergy Reserves.

(Signed,) ROBERT MCGOVERN.

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Sworn before me at Bytown, in said District, this 4th day of October, 1845.  
 (Signed,) CHARLES T. BAINES,  
 Commissioner for taking Affidavits in the  
 Queen's Bench, Dalhousie District.

## No. 43.

DISTRICT OF DALHOUSIE,  
 to wit:

} JOHN PERKINS, of Bytown, maketh oath and saith; That many years back, he was informed by Mr. Isaac Firth, that he had sold all his interest in Lot No. 39, and the Broken Front in the first Concession of Nepean, to Mr. John Rochester; and Deponent furthermore saith, that Mr. Daniel McLaughlin, often in course of conversation told him, said Deponent, that he got permission from John Rochester to repair a limekiln and to burn lime for his own use, and that he had purchased from said Rochester sundry pieces of timber and stone whilst erecting his Grist and Saw Mills; and Deponent furthermore saith, that he is well acquainted with Francois Laduceure, who built a house and stable on the said Broken Front, and that the said Laduceure told Deponent many times he paid five dollars per year to said John Rochester, for permission to build, and that he had paid his rent in making hay, hoeing potatoes and drawing timber from the Bay, and did then, and does now consider Laduceure to be Rochester's tenant.

And Deponent furthermore saith, that he knows of his own knowledge that Ozias Banning got a Lease from said Rochester for another part of said Broken Front, and that he Deponent did pay John Rochester rent for the same by orders of said Ozias Banning, and that he, the said Ozias Banning, had potatoes growing on said Broken Front in virtue of John Rochester's grant and permission, and (until some months back) he Deponent considered that the said John Rochester was the occupier of said lot and Broken Front, with the exception of the privileges above granted, when he heard that Daniel McLaughlin was about to lay claim to it, and by what right said Daniel McLaughlin pretends to the same your Deponent is utterly at a loss to conjecture, as he the Deponent or any of the neighbours residing contiguous thereto has equally as well founded a claim as the said Daniel McLaughlin.

(Signed,) JOHN PERKINS.

Sworn before me at Bytown, said District, this 6th day of October, 1845.

(Signed,) CHARLES T. BAINES,  
 Commissioner for taking Affidavits,  
 Q.B., Bathurst District.

## No. 44.

DISTRICT OF DALHOUSIE,  
 to wit:

} JOHN ROCHESTER, of Bytown, maketh oath, and saith; That his father, John Rochester, did, in the latter part of the year 1835, purchase from Mr. Isaac Firth his interest in Lot No. 39, with the broken front of the same, in the first Concession of Nepean, and County of Carlton; and furthermore, Deponent saith, that in the fall of 1837, he was present, and did know of his father giving permission to Francis Laduceure, to erect a small Log house on the said Broken Front, for the consideration of five

dollars per acre; and that in the year 1844, he had occasion to call on the said Laduceure on business, and in course of conversation Deponent asked him if it was true that he had sold his good will of the house. He answered, and told Deponent it was false, and said "Do you think I would do such a mean trick?" when Deponent replied, I should hope not; but some time after Deponent met Laduceure, and said, you have now done as I was telling you of, (meaning selling his good will of the house) to which he gave a grovelling answer, and said he would not have done so if there had not been so many lies told about it. Deponent furthermore saith, that he knew of the said Laduceure to work for his father in lieu or part payment of his rent, and at one time Deponent made hay with Laduceure when his labor was to go for the rent of said house, &c. &c.

(Signed,) JAMES ROCHESTER.

Sworn before me, at Bytown, in said District, the 9th day of October, 1845.

(Signed,) CHARLES T. BAINES,  
Commissioner for taking Affidavits,  
Dalhousie District.

### No. 45.

DISTRICT OF } CHARLES T. BAINES, of Bytown, in the said District,  
DALHOUSIE. } Solicitor, maketh oath and saith; That on the eighth day of December, one thousand eight hundred and thirty-seven, one Isaac Firth of the place aforesaid, Gentleman, employed this Deponent to draw out and Petition His then Excellency, Sir F. B. Head, for to cause a Patent Deed to be issued for Lot No. 39, and Broken Front, in the said Lot, in the Township of Nepean, the same being a Clergy Lot. This Deponent further saith that such a Petition was transmitted to Thomas Baines, of Toronto, in order to forward the same to His Excellency, and also at the same time, were enclosed certain Documents, in order to strengthen the title of the said Firth to the said premises, including a certificate from Col. Burke, to the effect that the said Isaac Firth had obtained possession, or had been put into possession by the late Earl of Dalhousie, besides a copy of a letter was also forwarded at the same period, from the then Secretary of the said Earl, allowing Mr. Firth to take possession and to occupy the same, besides several other memorandums and documents concerning the claim to the same.

This Deponent further saith, that he has repeatedly written, and employed persons to search for said papers, but that no tidings or any discovery of the said Petition or said papers can be found, and has repeatedly received in answer from the said Thomas Baines, that the same must have been forwarded and been mislaid, and that he has frequently searched for the same, but without effect.

(Signed,) CHARLES T. BAINES.

Sworn before me, at Bytown, in said District, this 9th day of October, 1845.

(Signed,) E. BILLINGS,  
A Commissioner in the Court of Queen's Bench,  
In the Dalhousie District,  
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**N**OW all men by these presents, that I, John Rochester, of the Township of Nepean, County of Carleton, and District of Bathurst, of the Province of Canada, of the one part; and Ozias Banning, of the same place, of the other part: Witnesseth that the said John Rochester, for the considerations and stipulations hereinafter mentioned, do hereby by these presence lease, demise and let unto the said Ozias Banning, a certain lot of land, to be one chain in front by one and a half chain in depth, forming an oblong square, situate, lying and being on the broken front of Lot No. 39 in the first Concession of Nepean, on the Ottawa front, commencing at the North corner where a house is erected, and running S.W. 24° 66 feet; thence N.E. 24° distance 99 feet; thence S.W. 66° distance to the place of beginning along a common road, which said lot of land is to be possessed and enjoyed by the said Ozias Banning, or his legal representatives.

The said Ozias Banning hereby does, by these presents, agree to pay unto said John Rochester, his heirs or legal representatives, the sum of One pound ten shillings per annum, payable semi-annually, that is to say; the sum of Fifteen shillings on the 1st day of May, and the like sum on the 1st day of November, each and every year, until such time as a deed of sale shall be perfected and delivered over to the said Ozias Banning by the aforesaid John Rochester; and be it furthermore understood, that upon and at the time of perfecting and delivery of said deed or bargain of sale, the further sum of Twenty-five pounds, currency of Canada, (£25 currency,) be paid down, being the consideration money in full from the then period for said lot, and the yearly rent of One pound ten shillings to then cease for ever.

And it is furthermore agreed upon on the part of the said Banning, that should the rent of the before mentioned parcel or tract of land remain unpaid Fourteen days after the time specified in this Indenture, this instrument to be null and void, and the premises and possession be given up to said John Rochester, his agent or assigns.

In witness whereof, the said parties have hereunto set their hands and seals, this Indenture being dated in the year One thousand eight hundred and forty-one, and on the            day of October, in presence of the undersigned,  
(Signed)           

(Signed,) OZIAS BANNING, [L.S.]  
JOHN ROCHESTER. [L.S.]  
C. WAUGH

Witnesses.—(Signed,)

C. WAUGH,  
DAVID BROWN.

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CROWN LAND DEPARTMENT,  
Montreal, 12th February, 1846.

As regards Lot No. 39 in 1st Concession, Nepean, reference is requested to the Memorial of the Rev. S. S. Strong, reported on this day, as well as to the proceedings in Council, 3rd February, 1834, on the Petition of Isaac Firth. The lot, by the recent inspection, is reported to be in a state of improvement.

The lot, by the recent inspection, is reported to be in the occupation of John Rochester, with 30 acres improved, and should your Excellency consider the claim advanced by the Reverend Mr. Strong invalid, I would recommend that Mr. Rochester be allowed to purchase at the valuation, 50s. per acre under the present regulations, upon paying back rent since the occupation of Isaac Firth (in 1823),

from whom he purchased the possession, with the exception of the South part (44 acres), required by the Ordnance Department for the Rideau Canal.

The broken front intervening between the above and the River Ottawa, is also a Clergy Reserve, containing about 76 acres, reported to have but 3 acres improved thereon, and having been in dispute between Daniel McLachlin and John Rochester, as well as other applications for the purchase, and as it immediately adjoins Bytown, I would suggest that it be offered at auction, at the upset price of 40s. per acre, with the exception of one or two acres, required for public purposes, by letter of 22nd ultimo, from the Board of Works.

It is presumed that as the land is set apart for the Clergy, both the Ordnance Department and Board of Works will be required to pay for the quantity reserved by them.

(Signed,)

T. BOUTHILLIER.

## No. 48.

BYTOWN, 4th February, 1846.

Sir,—I beg to transmit a Memorial accompanied by Correspondence, &c., which I pray may be laid before His Excellency in Council at the earliest convenient moment.

I have the honor to be, Sir,

Your most obedient Servant,

(Signed,)

S. S. STRONG.

To the Clerk of the Executive Council, Montreal.

To His Excellency the Lieutenant General the Right Honorable the Earl of CATHCART, Administrator of the Government of the Province of Canada, and Commander of Her Majesty's Forces in British North America,

IN COUNCIL.

The Memorial of the Rev. S. S. Strong,

HUMBLY SHEWETH:

That Your Excellency's Memorialist, in the year 1837, was appointed to the Rectory of Bytown, with the sanction of the Lieutenant Governor of the Province of Upper Canada, Sir Francis Bond Head, Baronet.

That at the time Your Excellency's Memorialist was so appointed, there was a Glebe set apart for the use of the said Rectory, as appears by the Reports of the House of Assembly in 1836, which consisted of Lots No. 17 and 18 in the Township of Gloucester.

That, in 1838, Your Memorialist, in reply to a letter received from the Clergy Reserve Agent, asking Your Memorialist if it was necessary that any change should be made in the above mentioned Glebe Lots, replied, that it was necessary, inasmuch as Lot No. 17 appeared to be leased; and Your Memorialist, therefore, prayed that Lot No. 39, first Concession of Nepean, Ottawa front, might be substituted for it, the Scotch Church having been endowed with 200 acres equally near the Town.

That on a visit of the late Lieutenant Governor, Sir George Arthur, to Bytown a short time afterwards, Your Memorialist laid before His Excellency the destitution of the Church of England in consequence of its Endowment having been withheld

whilst other denominations had been so favored, and prayed the interference of the Executive in its behalf.

That His Excellency Sir George Arthur admitted the hardship of the case, and requested that a letter, with a statement of the circumstances, might be addressed to him through the Secretary, which letter gave rise to the correspondence, copies of which are enclosed.

That it will be seen by the said correspondence that the justice of those claims were admitted, and would have been remedied by the Executive had the Clergy Reserve question been settled.

That Your Memorialist has learned with great regret that the Lot 18, first Concession of Gloucester, on the Ottawa, claimed by a person named Hopkins or Rathwell, which claims were set aside by Minutes of Council, copy of which is annexed,—and that Lot 39, first Concession Nepean, Ottawa front, which Your Memorialist prayed for in exchange for Lot No. 17 in Gloucester, and to which exchange the annexed correspondence shews no objection on the part of the Executive but for the unsettled state of the Clergy Reserves, the Squatter on it having been held to possess no claim,—are now offered for sale, and Your Memorialist, therefore, prays that the claims of the Church at Bytown to these Lots may again be considered, and have full and impartial justice rendered them before the Executive sanctions their alienation.

That Your Memorialist cannot but think the Church at Bytown possesses the strongest possible claims to the indulgence of the Government as it regards those Glebe Lots, inasmuch as in the year 1836 a Clergy Lot H, in Concession C, Township of Nepean, consisting of about 200 acres, was exchanged, as Your Memorialist is informed, for 25 acres of Crown Land (utterly worthless) in order that the said Clergy Reserve might be bestowed on the Scotch Church at Bytown.

That Her Majesty's Board of Ordnance having endowed the Roman Catholic Church with a very valuable piece of land, and the Methodists also, whilst such a favor was withheld from the Church of England. Your Memorialist believes these Endowments were made in consequence of its being felt that the Glebes set apart were secured to her by every principle of good faith, and would become her property.

That Your Memorialist, therefore, lays before Your Excellency in Council his claims for redress, and prays that if the question be not considered one in which the Executive in this country can interfere, that the sale of these Glebe Lots may be stayed until the pleasure of Her Majesty can be ascertained upon the subject.

Bytown, February 4, 1846.

(Signed,) S. S. STRONG.

Transferred to the Crown Land Office, 7th February, 1846.

(Signed,) E. PARANT.

INDORSED.—Read in Council, 18th February, 1846.—*Vide* John Rochester's Petition.

CROWN LANDS DEPARTMENT,

February 13, 1846.

Referred to a Committee of the Honorable the Executive Council.

By Command.

(Signed,) D. B. PAPINEAU.

## No. 49.

CROWN LAND DEPARTMENT,  
Montreal, 12th February, 1846.

As regards Lot No. 18, in first Concession of Gloucester, reference is requested to the Petition of Wm. Hopkins and the Order in Council of the 18th of November last, under which Order a sale of the Lot has been made.

No. 17 was in like manner described as a Glebe, together with No. 18, and stayed by the Attorney General; and the Department is not aware that an exchange for No. 39, in the first Concession of Nepean, had been authorized, as stated by the Reverend Petitioner, with regard to which Lot reference is requested to the accompanying application of John Rochester, with report thereon, of this date, No. 54.

(Signed,) T. BOUTHILLIER.

## No. 50.

EXTRACT from a Report of a Committee of the Honorable the Executive Council, dated 17th February, 1846, approved by His Excellency the Administrator of the Government, in Council, on the 18th of the same month.

On the respective Petitions of John Rochester, claiming the right of pre-emption of Lots No. 39, in the 1st and Broken Front Concessions, in the Township of Nepean, Clergy Reserves, of which he is in occupation, with 30 acres improved; and

The Reverend S. S. Strong, of Bytown, that the Glebe Lots, Nos. 17 and 18, in the 1st Concession, Ottawa Front, in the Township of Gloucester, and Lot No. 39, in the 1st Concession of the Township of Nepean, may be stayed, until the pleasure of Her Majesty can be ascertained on the subject.

The Committee recommend that John Rochester be allowed to purchase, under the present regulations, Clergy Reserve Lot No. 39, (with the exception of what has been taken by the Board of Ordnance) upon payment of the back rent, since 1823, and that Crown Land of an equal value to the quantity taken by the Ordnance be set apart and sold on account of the Clergy Fund. Further, that the Broken Front be also sold to John Rochester, at the valuation of 40s. per acre, according to the 25th Section of the Land Act; and lastly, that if any vacant Crown Land exists in the neighborhood of Bytown, (excepting Lot letter O) a free grant of ten acres thereof be made to the Episcopal Church of Bytown, if desirable, for the erection of a New Church, Parsonage House, Burial Ground, &c.

Certified.

(Signed,) E. PARANT.

To the Commissioner of Crown Lands.

## No. 51.

BYTOWN, (CANADA WEST), March 24, 1846.

To the Honorable the Commissioner of Crown Lands.

The Petition of DANIEL McLACHLIN, of Bytown, Yeoman;

MOST RESPECTFULLY SHEWETH:

That your Petitioner has heard, with surprise, that it is in contemplation to grant

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to John Rochester, the Glebe Lot (understood) as set aside for the purpose of the Church of England in Bytown, of which said John Rochester is now occupant.

That moreover, it is further in contemplation to grant to said John Rochester the broken front on the Ottawa, as a part of said Lot, whereas the latter is in reality a lot on a different Concession, and your Petitioner is led to believe no squatter can claim pre-emption for more than one Lot.

That your Petitioner has further understood said lots are about to be granted for the paltry sum of Two pounds per acre, whereas your Petitioner did, in the presence of many credible witnesses, offer the Crown Land Agent here, the sum of Ten pounds per acre.

That your Petitioner fears the latter circumstance has been overlooked, and that your Honorable Department has not been made acquainted therewith.

That your Petitioner is still willing to pay the sum of Ten pounds per acre for the broken front, and to which said John Rochester has no claim whatever either in law or equity.

Your Petitioner therefore prays, that the Patent of said broken front may be withheld from said John Rochester until the question has met with a full and more particular investigation.

And your Petitioner, as in duty bound, will ever pray.

(Signed,) DANIEL McLACHLIN.

In addition to the above, your Petitioner would most respectfully inform your Honorable Department, that he was returned by Messrs. Chitty and Roberts as occupant of said broken front, but finding the period of limitation was too short on his part, he withdrew his claim of pre-emption, but as your Petitioner's occupation fell short by only a few months, he respectfully calls the attention of your Honorable Board to the fact of no other person having occupied said broken front previous to himself.

That your Petitioner can adduce the most satisfactory evidence of the truth of this Petition by numerous credible witnesses.

And as, &c., &c., &c.

(Signed,) DANIEL McLACHLIN.

To Honorable DENIS B. PAPINEAU, &c., &c., &c.

CROWN LAND OFFICE, March 30, 1846.

Transmitted for the consideration of a Committee of the Honorable Executive Council, with reference to a report from this Office, of the 12th ultimo, on the Petition of John Rochester, and also the Memorial of the Rev. S. Strong, forwarded on the 23d inst.

(Signed,) T. BOUTHILLIER.

*Vide* Minute, 17-18 February, 1846. 20-22 June, 1846, on the Petition of John Rochester.

## No. 52.

Sir,—I beg leave to state that about the middle of September last, I offered Mr. Durie, the Crown Land Agent here, fifteen pounds an acre for the Broken Lot,

39, in Concession A, Nepean, on the Ottawa, and requested him to make a note of the same. I have heard, with great surprise, that the Government have it in contemplation to sell the said lot for two pounds an acre. I cannot conceive that my offer has been transmitted from the office, and wish to know whether or not it would not be proper for me, in justice to the Clergy Reserve Fund, to see this Lot so sacrificed without bringing the matter under the notice of the Crown Lands Commissioner; and I hope this will be a sufficient apology for my letter,—at the same time to beg to say that my offer of £15 per acre is still open for the acceptance of the Government.

(Signed,)

LYMAN PERKINS.

Bytown, 27th March, 1846.

D. B. PAPINEAU, Esq.,

Commissioner of Crown Lands, Montreal.

## No. 53.

MONTREAL, 21st May, 1846.

Dear Sir,—I yesterday spoke to you upon the subject of the sale of Lot No. 39, with the Broken Front, in the Township of Nepean, to John Rochester, when you informed me that you saw no obstacle to the sale, but invited me to put my application in writing.

This I now do, and I beg to add my earnest wish that no further delay be made in completing the sale to Mr. Rochester, who has, in my opinion, been too long put off upon pretexts not quite justifiable.

I am, dear Sir, yours truly,

(Signed,)

OGLE R. GOWAN.

T. BOUTHILLIER, Esquire.

## No. 54.

CROWN LANDS DEPARTMENT,

Montreal, 22nd May, 1846.

By Order in Council of the 18th February last, Mr. Rochester is permitted to purchase Clergy Reserve Lot No. 39, Broken Front, in the Township of Nepean; but the Department has suspended further action on the Order in consequence of the Petition of the Rev. Mr. Strong, sent to Council on the 23rd March last, and the proceedings in the Legislative Assembly on the matter.

I am informed by Mr. Gowan, M.P.P., that all opposition to the sale has been withdrawn. If so, I see no objection to carrying out the sale ordered in favor of Mr. Rochester.

(Signed,)

T. BOUTHILLIER.

## No. 55.

Copy of a Report of a Committee of the Honorable the Executive Council, dated June 20th, 1846; approved by His Excellency the Governor General in Council on the 22nd.

On re-consideration of the application of John Rochester for permission to purchase Lot No. 39, in the first Concession of Nepean, together with the Broken Front on the Ottawa,

The Committee respectfully advise Your Excellency to cancel the approved Minute of the 17th of February last.

The Committee agree in opinion with the Commissioner of Crown Lands as expressed by that officer in his Report, dated 11th October, 1838, on the Petition of Isaac Firth, that the Petitioner had no legal claim to Clergy Lot No. 39, in the first Concession of Nepean. He had, it seems, verbal authority from Lord Dalhousie to occupy that Lot, and when he afterwards applied by Petition to the Government of Upper Canada to be allowed to lease or purchase it, the Executive Council of that Province, on the 3rd of February, 1834, reported against the prayer of the Petition.

The Committee observes that Mr. Firth certifies that he "sold to John Rochester, of Nepean, in April, 1836, all his privileges on Lot 39 and its Broken Front "in the first Concession." Even if Firth had authority to sell his claim to the Lot in the first Concession, which he occupied by verbal authority, he never pretended, in any of his applications to the Government, that he possessed or desired to obtain the Broken Front; therefore, the claim to pre-emption to the Broken Front set up by Rochester falls to the ground.

With respect to Lot 39 in the first Concession, the Committee humbly advise Your Excellency that it be sold at public auction to the highest bidder, and that Rochester be paid the value of his improvements, to be ascertained by the District Agent.

The arrears of Rent due on the Lot since 1833, when Firth applied for a lease, to be deducted from the said valuation. The part of the Lot taken by the Ordnance Department to be paid for to the Government at the rate at which the residue of the Lot may sell. [By Order in Council, 18th February, (2348) other Land was substituted in lieu.]

Your Committee also advise Your Excellency that it is proper to sell, in like manner, Broken Lot No. 39, in front of the said mentioned Lot, and in order to suit the convenience of the inhabitants of Bytown, that a survey of the same be made, and Lots, not exceeding one acre each, be offered for sale by public competition.

Certified.

(Signed,) E. PARENT.

## No. 56.

To the Right Honorable Charles Murray, Earl Cathcart, Governor General of Canada, &c., &c., &c.

The Petition of JOHN ROCHESTER, of the Township of Nepean, Yeoman;  
HUMBLY SHEWETH:

That for the ten years last past he has been in the occupation and undisturbed

possession of the Clergy Reserve Lot No. 39, in 1st Concession Ottawa front, in the Township of Nepean. That he has erected thereon a good stone house, 30 by 26 feet; also a good frame house, 20 by 28 feet; a tannery, which is in successful operation, 30 by 40 feet or upwards, with two log barns, a log stable and other offices, and that he has cleared about forty acres on the said Lot. That he made application some time ago to the Honorable the Executive Council, praying to be allowed to purchase the said lot and the broken front thereof on the Ottawa. That this application was granted, at the valuation of the Inspectors of Clergy Reserves; but your Petitioner has now been informed that, on a reconsideration of the case, the order in his favor has been rescinded, and that both lots are to be sold at public auction. Should this last order be carried into effect, your Petitioner will be almost, if not altogether, totally ruined, and will lose the fruit of many years' hard labor, besides that the arrangements for the future support of himself and family will be broken up, and he himself compelled, at an advanced period of life, to seek some other mode of subsistence. Your Petitioner has made the improvements before mentioned, in the assumed hope that the same privilege of purchasing the land whenever it might be for sale, would be given to him that others have obtained who have occupied and improved Clergy Reserves under similar circumstances. He now humbly throws himself on the mercy of your Excellency and your Honorable Council, and prays that he may not be compelled to endure the disastrous consequences to which he will be subjected, if the land he has occupied and improved shall be sold at public auction, but that your Excellency will cause his case to be re-considered, and to order that he be allowed to purchase, at a fair valuation, the said Lot No. 39 in the 1st Concession of Nepean.

And your Petitioner will ever pray.

Montreal, 24th June, 1846.

(Signed,)

JOHN ROCHESTER.

### No. 57.

Extract of a Report of a Committee of the Honorable the Executive Council, dated 1st July, 1846, approved by His Excellency the Governor General on the same day.

On the Petition of John Rochester, that his case may be re-considered, and that he be allowed to purchase, at a fair valuation, the Clergy Reserve Lot No. 39, in the first Concession of the Township of Nepean, Ottawa Front, of which he has been in occupation for the last ten years and made large improvements.

The Committee were not informed of the extent and value of the improvements made by the Petitioner when the minute of the 20-22 June last was submitted to Your Excellency, and therefore they recommend, that that part of Lot 39 in the first Concession which was ordered to be sold by public auction, be sold to Petitioner at the valuation of the District Agent, so soon as the arrears of rent as stated in the said minute, are paid up. The broken front to be disposed of as formerly proposed, when the survey is made.

Certified.

(Signed,)

WM. H. LEE.

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## No. 58.

DALHOUSIE DISTRICT AGENCY, 13th July, 1846.

Sir,—I have now the honor to reply to your letter of the 6th instant, respecting the valuation of Lot 39 in the first Concession Ottawa Front, Nepean, a Clergy Reserve.

On going over the lot, which I deemed advisable, before expressing an opinion upon the value placed on it by the Inspectors, I found it, as regards the quality of the soil generally, to be quite inferior. The only really good land for cultivation upon it consisting of about 25 or 30 acres, is to be found within the extent of what has been cleared and improved, chiefly in front, adjoining the main road which runs between it and the broken front, with a part on the rear or South side of the clearance. The residue or rear part of the lot improved is swampy, partially dried, owing to a great part of the timber having been taken off, and rocky; the principal part then, you will remark, which is valuable for tillage is that which may be reckoned valuable from situation, viz: that which adjoins the main road, for I do not see that the rear part can be considered valuable apart from its fitness for cultivation, which it does not seem to possess.

I may also state, that I am led to believe that were the lot surveyed it would be found to fall considerably short in quantity.

With the above may be taken into consideration the amount of back rent which the present occupant will be required to pay, and which is likely to extend many years beyond the actual period of his occupancy.

Apart however from this, I am of opinion that the price placed upon it by the Inspectors may be considered as quite sufficient.

I have, &c., &c., &c.

T. BOUTILLIER, Esq.

(Signed,)

JOHN DURIE.

## No. 59.

INSTRUCTIONS to Provincial Land Surveyor Robert Bell, to survey the outlines of Broken Lot No. 39, in Concession A, fronting on the River Ottawa, Township of Nepean.

Sir,—Having been directed by Order in Council, of the 22nd June last, to cause the above mentioned lot to be surveyed and sub-divided into Lots, not exceeding one acre each, I have chosen you to perform the service.

You will, therefore, as soon as you have completed the survey of Lot letter O, proceed to survey the outlines of Lot 39, and prepare a plan thereof on the scale of four chains to an inch, shewing the natural features of the ground, and mark on it, in pencil, a projected sub-division of the Lot into acre lots, prolonging the streets already laid out in the adjoining Lot, No. 40, and transmit it to this Department, with a Report of Survey.

Instructions for the sub-division of the lot will be sent to you when your projected plan has been approved.

If the division lines between Lot No. 39 and the lots adjoining have not already been surveyed, you will notify the proprietors of these lots previously to tracing the division lines.

The ground colored yellow, on the accompanying sketch of the lot, is reserved by the Department of Public Works.

I have, &c.

(Signed,)

T. BOUTHILLIER.

Crown Lands Department,  
Montreal, 15th July, 1846.

## No. 60.

(Copy.)

To the Honorable Commissioner of Crown Lands, &c.

Sir,—Having completed the Survey of the Outlines of Broken Lot No. 39, in Concession A, fronting on the River Ottawa, Township of Nepean, in accordance with your instructions, dated 15th ult., I have the honor of submitting the following Report thereon.

As required by the Instructions, I notified the proprietors of the adjoining lots, before proceeding with the Survey.

The line between Lots Nos. 39 and 40 had been established by me, in September, 1845, in accordance with the Statute of 59th Geo. III, Cap. 14. At that time I went to the governing boundary line of the Concession, and took the correct bearing of a straight line, between the front and rear angles of the Concession on that boundary, and ran this line parallel to it.

The original post, between No. 39 and 40 being lost, I procured the best evidence that could be had to prove where it had originally stood, having taken the depositions of three persons respecting it. I planted a stone monument, accordingly, at the bank of the River, as the boundary of the said lots 39 and 40. These depositions I have now procured, and they are herewith submitted. The post planted between lots 38 and 39 was also lost, but I could get no evidence whatever respecting it, neither by a careful examination of the premises, nor by inquiry, although I applied to the oldest settlers and residents in the place. I have searched for the nearest undisputed post on that side, and found it between Lots No. 36 and 37, it is a soft Maple tree standing near the River edge; to all appearance, at least, it is an originally marked monument, and as far as I can learn has never been disputed. I next proceeded to scale the River from the boundary between 39 and 40, to that between 36 and 37, and having ascertained the true distance between these points, I divided it equally between Nos. 37, 38 and 39, and then ran the line between 38 and 39 in the manner which the statute requires, and ascertained the situation of the water's edge by intersections which ended the operations.

Respecting the natural features of Lot No. 39, I would beg to state that the greater part of it is nearly level, near the rear end of the lot there is a gently elevated ridge running almost parallel with the Concession line, and next the River on the Westerly side is another ridge running parallel to the shore—but little elevated, and forming a long regular slope to the water edge. The front part of the Lot is dry and although level, presents a rocky surface. The only swamp on the lot is a small tract that lies along the South shore of the Bay, and extends easterly across it.

The most of the Lot is very closely covered with a second growth of green Timber, chiefly Pine and Cedar.

I would also beg to state, that as directed, I have drawn a plan of the lot on the

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scale of four chains to an inch, shewing the features described, and marked on it a projected subdivision into acre lots.

In doing so, I have prolonged the streets already laid out on Lot No. 40. The size of the Lots, the situation of the boundaries, and the positions of the streets preclude the possibility of carrying out the regularity which is so very desirable in such a plan, but I have endeavoured to make it as little irregular as possible.

I would beg leave to suggest, that if the lots were laid out smaller, that a much greater profit could be realized than can be if they are laid out and sold in acre lots. As respects the sale of building lots, the situation of this lot is equally as eligible as that of Lot, Letter O, and as it is not of much use for other purposes, being rocky and the soil of inferior quality, there is no doubt but the acre lots would be purchased by speculators only, (as others for building purposes could be suited at a less expense) and then subdivided by them and offered for sale; I mention this, because, being aware of its situation in these respects, I thought it my duty to do so, and I hope that it may not be looked upon as improper. I have therefore projected a Sub-division of the Lot into quarter acre lots, in order to shew the effect of carrying out the above suggestion, should the Department think proper to give it their consideration, it is drawn on the scale of four chains to an inch.

Respectfully submitted,

I have the honor to be, Sir,

Your most obedient Servant,

(Signed,) ROBERT BELL.

Bytown, 19th August, 1846.

Honorable Commissioner Crown Lands,  
Montreal.

## No. 61.

Instructions to Provincial Land Surveyor Robert Bell, to sub-divide Broken Lot No. 39, in Concession A, Ottawa Front of the Township of Nepean, into Building Lots.

Sir,—Having examined and approved of your Survey of the Outlines of the above-mentioned Lot, and of your projected sub-division thereof into quarter acre lots, one chain in front by two chains fifty links in depth. I have to instruct you to proceed with the Survey thereof accordingly, by planting stone monuments at the ends of the streets, and substantial posts of durable wood at the front angles of the lots duly numbered with a marking iron.

The streets are to be one chain, and the reserve for a thoroughfare along the water's edge one chain and a half in width.

On completing your survey, you will prepare a plan thereof on the scale of two chains to an inch, marking on it the bearings and lengths of the outlines of the irregular lots, and their contents in decimals of an acre, also any buildings and other improvements, with the names of the occupants, and the total contents of the plot, and transmit it to this Department with your Field Book, Report and Diary, and your account and Pay List (in duplicate) must be duly attested on oath. The Pay

and allowances of yourself and Party to be at the usual rates. Mount your drawing paper on thin Linen or Cotton previous to drawing your plan.

I have the honor to be, Sir,

Your most obedient Servant,

(Signed,)

T. BOUTHILLIER.

Crown Lands Department,  
Montreal, 24th August, 1846.

## No. 62.

(Copy.)

Bytown, 16th September, 1846.

Sir,—I have the honor to inform you that I have completed the survey of the sub-division of Lot No. 39, in Concession A, on the Ottawa River, in the Township of Nepean, in accordance with your instructions of the 24th ult. I have prepared a plan thereof as directed on the scale of two chains to an inch shewing the buildings and improvements.

The shore along Water street being so situated that the water advances and recedes on a distance of from three to four chains. I measured out to what I had reason to believe was about the edge of the medium height of water.

Owing to the Lot being closely covered with a small growth of Cedar and Pine, the operations were slowly got on with.

I have the honor to be, Sir,

Your most obedient Servant,

(Signed,)

ROBERT BELL.

Honorable Commissioner of Crown Lands,  
Montreal.

## No. 63.

DISTRICT OF DALHOUSIE, } ISAAC FIRTH, of Bytown, in the said District,  
to wit: } Gentleman, maketh oath and saith; That he, this Deponent, was in possession of Lot No. 39, in the first Concession of the Township of Nepean, County of Carleton, and aforesaid District, and also the Broken Front of the said Lot; that he, this Deponent, always considered the said Broken Front as belonging to the said Lot; that he was in possession of the same for ten or eleven years previous to the year One thousand eight hundred and thirty-four; that he then sold all his right, title and interest of the same, together with the Broken Front, to John Rochester, senior, and that he believes the said John Rochester has been in possession of the same ever since, and greatly improved the same.

(Signed,)

ISAAC FIRTH.

Sworn before me at Bytown, in said District, this 13th day of July, 1846.

(Signed,)

CHARLES T. BAINES,

Commissioner for taking Affidavits,  
Dalhousie District.

## No. 64.

This is to certify that I sold to John Rochester, of Nepean, in April, 1836, all my privileges in Lot No. 39, and its Broken Front, in the first Concession, Ottawa Front, in Nepean, for the sum of Sixty pounds, which amount he paid me duly.

Said Lot was given me possession of, by Sir Perigrine Maitland, in the beginning of 1824, through Major Hillier, which Lot and Broken Front I enjoyed uninterrupted possession of until I let Mr. Rochester have it.

(Signed,)

ISAAC FIRTH.

## No. 65.

ORDER IN COUNCIL, 25th September, 1846.

On reconsideration of the application of John Rochester.

The Committee advised Your Excellency on the 1st July last, to allow the Petitioner, John Rochester, to purchase Clergy Lot No. 39, 1st Concession of Nepean, on the Ottawa, at the valuation of the District Agent.

The Committee were induced to recommend this disposition of the Lot, on account of the extensive improvements made by him on the land, and not because of any right of pre-emption which he could set up to the Lot, as Isaac Firth, from whom he obtained occupation, was repeatedly informed by the Government that the Lot would not be sold to him, but would be sold for public purposes.

With respect to the Broken Front, it does not appear that Firth ever made any application for it, and this portion of ground is not even mentioned in any of the papers or correspondence, until he assigned his interest to John Rochester, when the Broken Front is mentioned for the first time.

In the minute of the 22nd June, Your Excellency was pleased to direct that the Broken Front be surveyed and divided into Lots not exceeding one acre each, and sold in the usual manner, at the valuation of the District Agent.

The survey has taken place, and when the value is established the Lots will be ready for sale. Rochester conceives he has a claim to consideration in the disposal of this Lot, as some part of his improvements have been made on it, and as there can be no objection to his purchasing the whole if he is inclined to pay the full value of the lot, the Committee respectfully advise Your Excellency to allow him to do so, after the Agent has reported what that value is.

In giving this advice, the Committee deny any claim of right on the part of Mr. Rochester.

Approved in Council same day.

Who were the Council then?

## No. 66.

[Nothing appears under this head in the manuscript.]

## No. 67.

From Canada Gazette of 8th January, 1848.

"CROWN LANDS DEPARTMENT,

"Montreal, 4th January, 1848.

"NOTICE is hereby given, that the under mentioned Town Lots, adjoining  
"Bytown, (being situated on the Clergy Reserves No. 39, broken front on  
"the River Ottawa, in the Township of Nepean), will be open for sale, at the prices  
"stated, upon application to John Durie, Esq., the Resident Agent, on and after  
"the Ninth day of February next."

The purchase money to be paid in cash; one-tenth at the time of sale, and the remainder in nine equal annual instalments, payable on the first of January in each year, with interest from the date of sale:—

Broad Street, West side.—No. 1, (£15); 2 to 9, inclusive, (£10 each); 10, (£12 10s.); 11 to 20, inclusive, (£10 each); 21, (£12 10s.); 22, (£25.)

Lyon Street, East side.—Nos. 15 to 21, inclusive, (£10 each); 22, (£12 10s.); 23, (£17 10s.)

Lyon Street, West side.—Nos. 15 to 21, inclusive, (£10 each); 22, (£12 10s.); 23, (£25.)

Richmond Street, East side.—No. 15, (£12 10s.); 16 to 22, inclusive, (£10 each); 23, (£12 10s.); 24 (£17 10s.)

Richmond Street, West side.—No. 16, (£12 10s.); 17 to 22, inclusive, (£10 each); 23, (£12 10s.); 24, (£22 10s.)

West Street, East side.—No. 17, (£17 10s.); 18 to 23, inclusive, (£10 each); 24, (£12 10s.); 25, (£17 10s.)

West Street, West side.—No. 17, (£15); 18, 19, 20, (£12 10s. each); 21, (£17 10s.)

Water Street, East side.—No. 1, (£25); 2 to 9, inclusive, (£20 each); 10, (£25); 11, 12, 13, 14, (£20 each.)

Ottawa Street, South side.—Nos. 1 to 6, inclusive, (£10 each); 7, (£20.)

Ottawa Street, North side.—Nos. 3, 4, 5, (£10 each.)

Queen Street, South side.—No. 3, (£12 10s.)

Queen Street, North side.—No. 3, (£12 10s.)

Lewis Street, South side.—No. 3, (£12 10s.)

Lewis Street, North side.—No. 3, (£15.)

Oregon Street, South side.—No. 3, (£17 10s.)

The Bytown Gazette will insert the above once a week until the day of sale.

## No. 68.

To His Excellency the Right Honorable the Earl of Elgin and Kincardine, Governor General of British North America, &c., &c., &c.  
The Petition of JOHN ROCHESTER, of Bytown;

MOST HUMBLY REPRESENTS:

That your Petitioner, after a great deal of expense, delay and vexation, has

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been allowed to purchase Clergy Lot No. 39, 1st Concession, Nepean, under the Order in Council of date 17th February, 1846.

That in the very Order in Council referred to, it was also sanctioned that your Petitioner would be allowed to purchase the broken front of lot 39, in the following words, viz:—"Further, that the broken front be also sold to John Rochester, "at the valuation of 40s. per acre, according to the 25th section of the Land Act, "and lastly, that if any vacant Crown Land exists in the neighbourhood of Bytown (except lot O), a free grant of 10 acres thereof be made to the Episcopal "Church of Bytown, if desirable, for the erection of a new Church, Parsonage "House, Burial Ground," &c. Approved in Council, February 18th, 1846.

That owing to the interference and misrepresentation of the Reverend S. S. Strong and others, this Order was not carried into effect; but under another Minute in Council, of 22nd of June, 1846, quoted in the Order of Council, of 25th September, 1846, it was ordered, with a view to enhance the value of the land upon him (your Petitioner believes), that it be surveyed into Town Lots, which was accordingly done, and the value of the land increased to about £34 per acre; in which Order it was decided to give your Petitioner the opportunity of purchasing the land still, at the increased valuation.

That since the survey no communication has been made to your Petitioner; and to his loss, surprise, and astonishment the said broken front of Lot 39 is to be offered for sale by public competition, on the 9th day of February next, as advertized in the Official Gazette, by order of the Crown Land Department, under date of January 4th instant.

Wherefore your Petitioner most earnestly prays that your Excellency will, from a sense of justice and right, order that the case be re-heard and investigated, and that no sale take place until the matter be more fully and better understood.

And, as in duty bound, your Petitioner will ever pray.

Bytown, January 17, 1848.

(Signed,)

JOHN ROCHESTER.

## No. 69.

CROWN LAND DEPARTMENT,

Montreal, January 22nd, 1848.

The Lots to which the Petitioner alludes are those which have been advertized for sale, as directed by Order in Council of the 8th of December, with reference to which lands applications from the Petitioner were under the consideration of the Governor General in Council on the 18th of February, 22nd June, 1st July, and 25th of September, 1846.

Mr. Bell, in his report of survey, does not mention any improvements on the lot as made by Mr. Rochester, and states that the lot is almost entirely covered with a second growth of green timber, chiefly pine and cedar.

I beg to add, that from information received by the Department, considerable competition is expected to take place in the sale of these lots.

I would, however, request attention to the last paragraph of the Order of the 25th September, 1846, under which it would seem that the Petitioner conceives himself entitled to a right of pre-emption of the whole of the lots at the upset price.

(Signed,)

T. BOUTHILLIER.

## No. 70.

Extract from a Report of a Committee of the Honorable the Executive Council on Land Applications, dated 28th January, 1848, approved, by His Excellency the Governor General in Council on the same day.

On the application dated 17th January, 1848, of John Rochester, remonstrating against the order in Council of 8th December, 1847, directing the sale by Public Auction of Broken Front Lot 39, in 1st Concession of Nepean, and praying that the sale be stayed until his claim to be allowed to purchase the same be fully investigated.

The facts of the case are as follows:—John Rochester acquired from John Firth in 1836 Lot No. 39 and its Broken Front in 1st Concession of Nepean. By order in Council of 18th February, 1846, the Lot (with the exception of the portion required by the Ordnance Department) was directed to be sold to him at 50s. per acre, and the Broken Front at 40s. paying back rent since 1823. By Order in Council of 22nd June, 1846, the previous decision was reversed and the whole Block ordered to be disposed of at Public Sale. The Executive, however, in consequence of the extensive improvements made by Petitioner on the Lot, subsequently (1st July 1846) directed that Lot 39 should be sold to him as originally intended, but that the Broken Front should be divided into acre Lots, and sold at Public Auction. Petitioner then renewed his claim to be also allowed to purchase the Broken Front and the Order in Council of 25th September, 1846, directed that he should be "allowed to do so, if he were inclined to pay the full value of it, after the Agent had reported what that value was."

The valuation by the District Agent of the Lots on the Broken Front was subsequently submitted for the consideration of the Committee of Council by the Commissioner of Crown Lands, without any reference being made in the letter of that Officer, forwarding the valuation to the right of purchase given to John Rochester, consequently the Order in Council of 8th December, 1847, approving of the valuation, again directed the sale of the Lots at Public Auction.

Petitioner now remonstrates against the proposed public sale as being at variance with the above quoted Orders in Council in his favor.

The error originated in the omission of the Commissioner of Crown Lands to mention in his letter transmitting the valuation of the Lots, the right given to John Rochester to purchase them, the Committee therefore recommend that the sale be stayed until the 1st May next, during which time Petitioner be allowed to purchase under the present Clergy Reserve regulations at the valuation now placed on the Lot by the District Agent, as directed by Order in Council of 25th September, 1846. Should he, however, neglect by that time to complete the purchase, the Committee humbly advise Your Excellency that the Lots be then sold at Public Auction.

Certified.

(Signed), J. JOSEPH, C.E.C.

To the Commissioner of Crown Lands.

## No. 71.

ByTOWN, February 8th, 1848.

Sir,—On behalf of Mr. John Rochester, I beg herewith to forward his Petition

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about a vexatious claim he has had for years before the Government, which I beg leave to request you will be pleased immediately to lay before His Excellency in Council.

The conspiracy and intrigues with which he has been beset by individuals in this matter, and the delay, misconception, and misconstruction of his case before the Government, and particularly the Crown Land Department, is enough to disgust and vex any person.

The facts alleged in his Petition cannot be controverted, and I beg you will be pleased to look into all the references, and report the same accordingly.

I have the honor, to be Sir,

Your most obedient Servant,

(Signed)

WILLIAM STEWART.

The Honorable JNO. A. McDONALD,  
Commissioner of Crown Lands, &c., Montreal.

## No. 72.

To His Excellency the Right Honorable the Earl of Elgin and Kincardine, Governor General of British North America, &c., &c., &c.

The Petition of JOHN ROCHESTER, of Bytown,

IN COUNCIL.

MOST HUMBLY REPRESENTS:

That your Petitioner gratefully acknowledges, in reply to his Petition of the 17th ultimo, the stopping of the sale, and the delay sanctioned to him till the first day of May next, for the purchase of the Broken Front of Lot No. 39, Nepean, a Clergy Reserve. But your Petitioner conceives he has just and valid grounds for appealing from the manner in which the excessive valuation of said Lot was established.

Your Petitioner, without being desirous of confirming the value of the said Broken Front to two pounds per acre as valued by the Inspectors, when by connivance and fraud one of the Inspectors attempted to possess himself of it, to the loss and injury of your Petitioner, and being ten shillings an acre less than the portion of the Lot in rear purchased by your Petitioner, and although the right to purchase at that reduced rate is sanctioned to your Petitioner under an order in Council of 17th February, 1846. And although the vexation, delay, and immense expense to which your Petitioner has been subjected from the intrigue, interference, and misrepresentation of certain parties, would, in strict justice, entitle your Petitioner to it at that valuation, yet if the Government insists upon it, your Petitioner will forego his right to that valuation.

Your Petitioner however cannot but dissent and appeal from the arbitrary and oppressive manner in which the District Agent of Crown Lands had been instructed to survey the said Broken Front in small Town Lots, with the streets and conveniences required for a Town, and to value the same accordingly with the criterion which a fictitious and enhanced value of property in Bytown in prosperous times and under peculiar circumstances placed before him.

Your Petitioner would beg to direct attention to the circumstance mentioned in the Order of Council. of date 25th September, 1846, viz. :—"With respect to the Broken Front it does not appear that Firth ever made any application for it, and this portion of ground is not even mentioned in any of the papers or correspondence until he assigns his interest to John Rochester, when the Broken Front is

"mentioned for the first time." This fact is notorious, that no distinction was ever made between and Broken Fronts, and invariably understood, known, and called by the first settlers, to be but the same lots, and continued so until the Inspector of Clergy Reserves made the distinction, when he attempted fraudulently to possess himself of it, as the accompanying paper from Philip Roberts, one of the Inspectors, will prove. But to put this fact beyond doubt, your Petitioner only begs reference to the words, designation, and description in the original grant from the Crown of the Lots on each side of it, viz.:—38 and 40 a copy of which is in the possession of your Petitioner.

Wherefore your Petitioner most humbly but earnestly prays, that if your Excellency in Council conceives that the reduced valuation of the Inspectors should be departed from, your Petitioner most distinctly but respectfully persists in his right to it at the valuation set and paid for the other portion of the Lot, viz.:—£2 10s. per acre, both in justice and in accordance with the 25th Section of the Act 4 & 5 Vic., cap. 100—and with the spirit of the general instructions with regard to all Clergy Lands in the Province. Should it however be decided that your Petitioner must be inflicted with farther delay, vexation, and expense, he most humbly and respectfully conceives, that the most that could be desired would be to cause another valuation to be made by disinterested respectable farmers as to its value as farming land at the time your Petitioner purchased it from Isaac Firth in 1835.

Your Petitioner however bases his hope on the justice and clemency of Your Excellency in Council, that this plain statement of facts will induce your Excellency to relieve your Petitioner from farther trouble and annoyance, and order that his right be confirmed at the the price alluded to.

And as in duty bound, Your Petitioner will ever pray.

(Signed,) JOHN ROCHESTER.

Bytown, February, 8th, 1848.

### No. 73.

The Inspector of Clergy Reserves in the Dalhousie District during the inspection in the year 1844, found Mr. John Rochester, Senior, in possession of Lots 39, in the 1st Concession, and 39 on the Broken Front of the Ottawa, in the Township of Nepean, in the said district, held by him under a deed from one Isaac Firth, for and in consideration of the sum of sixty pounds currency, paid by three instalments.

The said Isaac Firth was in the occupation of the aforesaid Lots for the term of 15 years previous to 1842 with consent and approbation of Government.

On the above facts, Mr. Roberts, one of the Inspectors, arrived at the conclusion that Mr. Rochester's name had the best to be returned for said Lots; John Chitty, his colleague, having a sinister object in view, persisted in returning the name of one Daniel McLaughlin, who never occupied any part of the said Lands. Mr. Roberts consequently made a written Report to the Crown Land Office in favor of Mr. Rochester's claim, which was admitted by the Government, and that of Mr. McLaughlin expunged.

The following facts, if necessary, can be testified to; John Chitty, the Inspector above alluded to, being desirous to obtain the Broken Front for his own use and benefit, procured a deed from a Frenchman, a tenant of Mr. Rochester's, of a small log house on the Broken Front, which he supposed would entitle him to a claim, but on more consideration he deemed it advisable, being one of the Inspectors, to cancel the deed in his own name, and get one executed in that of above named

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Daniel McLaughlin, who stipulated for licenses of the lands if he succeeded in the object in view.

It can be further proved that Chitty offered his colleague the choice of a Building Lot on said lands (of course to carry out more easily his nefarious intention), but it was indignantly refused.

The Report made and lodged in the Crown Land Office, by Mr. Roberts, can be seen at any time on proper application.

There exists many other circumstances to corroborate the foregoing statements, if required, that can be brought forward.

Little doubt can remain in the minds of any unprejudiced person that a deep rooted conspiracy sprung out of the disappointed hopes of Chitty, who, there is good reason to believe, induced the Rev. S. S. Strong, and after his unsuccessful attempt, then the Board of Works, to lay claim to the Broken Front, with the obvious intention of depriving Mr. Rochester of his just right of pre-emption conceded to him in common with all other occupants of Clergy Lands, that had been in possession for a certain prescribed term of years; this opinion is fully borne out by the fact, that the foregoing applications were not brought forward until the final rejection of the one made by McLaughlin.

(Signed), PHILLIP ROBERTS.

## No. 74.

CROWN LAND DEPARTMENT,  
Montreal, 20th April, 1848.

Sir,—Your letter of the 8th instant, addressed to the Provincial Secretary, having been transferred to this Office, I have to inform you, that it appears that your Petition of the 8th February, was under the consideration of the Executive together with one from Mr. Nicholas Sparks, who claimed a part of the land in question as being the broken front of Lot No. 38; in consequence of which it was ordered that the sale to you should be suspended, it being proposed to Mr. Sparks to agree to a special case involving the question in dispute to be submitted to the Judges of the Queen's Bench for their opinion.

(Signed), J. H. PRICE.

Mr. JOHN ROCHESTER, Bytown.

## No. 75.

BYTOWN, 5th January, 1850.

Dear Sir,—Should you find it suitable to do so, I would be glad that you would submit, for the consideration of the Honorable the Commissioner of Crown Lands, the necessity of efficient measures being taken to put a stop to the occupation of Lot No. 39, in the broken front, by squatters; which is a nuisance which will not only depreciate the value of the remainder of that Lot, but will also, if allowed to continue, inflict serious wrong and injury on the neighbouring proprietors.

If squatters be allowed to go on occupying this lot in a lawless manner, their presence and the character which they will give to the neighbourhood, will greatly reduce the value of property at this end of the Town; and I, and others, who have had to pay at the rate of £400 an acre for the ground we have built upon, will find

our properties irremediably depreciated, and suffer every other inconvenience arising from a bad neighbourhood.

From its position, Lot 39 was well adapted for a Villa Ground, particularly from being beautifully wooded, but the squatters are cutting the wood which gave it its principal value as villa ground, and no respectable person will buy land there to build upon among a low class of squatters. It was subdivided into village lots at considerable expense to the public, but the squatters are rendering the survey valueless by removing the boundary stones.

If something be not done in this matter, the land will soon become of very little value to the public, and will fall into the hands of the squatters at little more than a nominal price, to the exclusion of respectable people who would willingly give its value for it; whereby considerable loss will be entailed on the public, besides serious injury to the owners of property in the neighbourhood and inconvenience to persons residing there. I was informed by Mr. Rochester that a man was nearly killed not long ago, on the road in front of No. 39, not far from my dwelling, by some worthless people frequenting some of the squatters' houses.

I remain, &c., &c.

JOHN DURIE, Esquire,  
Crown Land Agent, Bytown.

(Signed,)

A. J. RUSSELL.

## No. 76.

COUNTY OF CARLETON AGENCY,

Bytown, 28th February, 1850.

Sir,—I beg leave to place before you the enclosed letter from Mr. Russell, of the Crown Timber Office here, having reference to Lot 39 in Concession A, Ottawa, Nepean.

The occupation of the lot by squatters, to which Mr. R. refers, is not recent, the last case which occurred was, I believe, in the spring of 1849, but the season of the year is again near, when there is danger of its being again repeated. From the character of the buildings, which under these circumstances are erected, they can generally be put up, and inhabited before even the settlers on adjoining lots are aware of their presence; so that there is scarcely a possibility of my being able to do more, than inform the parties, after they have taken possession, that this will give them no claim to pre-emption. I have repeatedly visited the lot, and whenever made aware of trespass, done all in my power to prevent it. I would here refer to my letter of the 26th November, 1847, in reply to one from the Department, dated the 19th of the same month.

The lot was advertised to be sold on the 9th February, 1848, having been subdivided into Town Lots, but the sale was subsequently stayed in consequence of a claim which Mr. John Rochester had laid before the Government. The last notice I have respecting it, is dated 1st February, 1848, ordering that the sale be stayed until the 1st May of that year, during which time Mr. Rochester is allowed to purchase at the valuation placed on the lot by me.

I am aware that the character of those who have squatted on the lot is very bad, and no doubt their presence, besides proving a source of great annoyance to the respectable inhabitants residing in the vicinity, must tend to depreciate the value of property in the neighbourhood. So long as it remains unsold it will be exposed to trespass, and particularly so from its situation being so near the Town, and the

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I have the honor, &c., &c.

(Signed,)

J. DURIE.

The Honorable the Commissioner of Crown Lands,  
&c., &c., &c., Toronto.

### No. 77.

CROWN LAND DEPARTMENT,  
Toronto, 11th March, 1850.

Sir,—With reference to your letter of the 28th ultimo, I have to state, that as only a portion of the lot is claimed by Mr. Nicholas Sparks, there appears to be no reason why the remainder should not be sold to Mr. John Rochester, in accordance with the Order in Council of the 28th January, to be effected immediately.

Previous, however, to making the offer to Mr. Rochester, you will place yourself in communication with Mr. Sparks, with the view of ascertaining whether he has an objection to offer. The lots to be withheld from sale being all those lying West of Richmond Street.

(Signed,)

J. H. PRICE.

J. DURIE, Esq., &c., &c., &c.

### No. 78.

COUNTY OF CARLETON AGENCY,  
Bytown, 29th April, 1850.

Sir,—I have been instructed by the Honorable the Commissioner of Crown Lands to offer for sale to you, on condition that the purchase be effected immediately, that part (reserving the portion marked for the Board of Works) of Lot No. 39, broken front Ottawa, Nepean, lying East of Richmond Street, according to the valuation placed upon it as subdivided into Town Lots.

I am, Sir,

Your obedient Servant,

(Signed,)

J. DURIE.

To Mr. JOHN ROCHESTER, Bytown.

### No. 79.

NEPEAN, June 20th, 1850.

Sir,—Temporary absence from home, and other circumstances prevented my replying to your letter of the 29th April last, until now, and with reference to Broken Front of Lot No. 39, Nepean, Clergy Reserve, I have merely to say in reply, that my two petitions in January and February, 1848, on that subject, with other subsequent communications, are in the hands of the Government, without any action having been taken upon them.

The Petitions and communications referred to, set forth and explain every fact and circumstance connected with the subject. To attempt here to enter into every particular again would only mistify and multiply what is in itself simple and plain; and what has (from what I very humbly conceive to be a misconception of the case,) been swelled into a matter of undeserving importance.

I cannot however refrain from remarking, that with respect to Mr. Sparks' pretensions about the Broken Front, and the survey thereof, the Government are unnecessarily interfering in a matter over which they have no control; you cannot be ignorant of the fact that there is in the Field, a Broken Front to Lots 38, & 39, therefore the arrangement of the survey must be determined by surveyors, and the law of the Province. So upon that score Mr. Sparks' pretensions need be no barrier to the final closing of my claim to the Broken Front of Lot No. 39, which I can determine by law, neither do the Government incur any responsibility by conveying their right to it, as there is such a space in the field.

From the cruel injustice, expense and delay to which I have been subjected from one cause or another, if I received the land for nothing it would not compensate for the annoyance and expense to which I have been subjected.

I now beg leave to state, that until my representations are submitted and decided upon by the Governor in Council, I am not in a position to make any other distinct proposition.

I am Sir,

Your most obedient Servant,  
(Signed,) JOHN ROCHESTER.

JOHN DURIE, Esq.,  
Crown Land Agent, Bytown.

## No. 80.

COUNTY OF CARLETON AGENCY.

Bytown, 28th June, 1850.

Sir,—Referring to your letter of the 11th March last, I beg to state that agreeable to your instructions, I placed myself in communication with Mr. Sparks, in order to ascertain what portion of the Broken Front of Lot 39, on the Ottawa, Nepean, he claimed as being covered by a deed which he holds, and received in reply his letter of the 20th April, which I now enclose. I may here mention that Mr. Sparks has since taken possession of the land by removing his fence to the West corner of Richmond Street. I took the precaution however of forbidding him until the matter could be finally disposed of.

On receipt of Mr. Sparks' letter I offered, as directed, the residue of the Lot to Mr. Rochester (see my letter herewith) to which the enclosed answer, received a few days since, has been given, and which I now submit to you.

The difficulties in the way of a settlement of this case appear to be to determine what portion of land belongs to Lot 39 in the Broken Front; without offering any opinion of my own, I may state that according to that of Surveyors here, with whom I have conversed on the subject, Mr. Sparks appears to be claiming land in this instance to which he has no title; the other difficulty concerns the price at which the land is now offered to Mr. Rochester, were it offered in building Lots (into which it has been sub-divided) separately at public sale as was contemplated when my valuation was made, it might still realize that amount, although property in Bytown is not at present worth what it was then, but offered in a Block, I have no expectation that anything like the amount could be obtained; viewed as a farm

Lot, it was originally valued by the Government Inspectors at £2 per acre, this was much too low.

I do not believe there would be any difficulty in disposing of it at £5 per acre.

I have the honor to be, Sir,  
Your most obedient Servant,

(Signed,) J. DURIE.

The Honorable Commissioner of Crown Lands.

## No. 81.

Bytown, 3rd February, 1852.

Dear Sir,—I duly received your Note, which you left in my absence, and regret you had the trouble of calling so often without finding me; I have perused the documents you left with considerable attention with respect to Lot No. 39, Nepean, and I must say your case appears to me quite plain, and I am surprised it has not been long ago settled. I have visited the premises for my own satisfaction, and it is an act of injustice to you and the neighbourhood to allow such a swarm of such characters to plunder the premises, and infest the vicinity of Bytown. I would advise you to bring the matter again under the consideration of the Government. I understand you are admitted as in occupation, and entitled to purchase by the Act of Parliament, and that an Order in Council has passed confirming your right to purchase at two pounds per acre.

In answer to your inquiry of course, I will be happy to render any assistance to you in my power.

JOHN ROCHESTER, Esq.,  
Bytown.

(Signed,)

EDWARD MALLOCH.

## No. 82.

NEPEAN, February 16th, 1852.

Sir,—I beg leave most respectfully to bring under your consideration, a very singular circumstance, that I have a claim which has been before three of your predecessors in Office, for the last four or five years, with two petitions to the Governor in Council, and several letters relative to the same, and it has baffled every effort that I could make, and other parties on my behalf, to get a hearing and decision before His Excellency in Council on the subject; the whole matter is to me inexplicable, except that it may have been much easier to allow a poor obscure individual like me to suffer a grievous injury and loss, rather than be at the trouble of investigating the facts set forth in my petition and correspondence.

I will not in this letter trouble you with a review of the case, as it only tends to multiply reference to what is already amply explained.

I therefore most respectfully but urgently crave reference to the documents hereafter mentioned, in their order and date, which must be all on file either in the Crown Land Office, or the Executive Council Office, viz.:—

- No. 1. My petition of date..... 17th January, 1848.  
 2. Do. do. do..... 8th February, 1848.  
 3. My letter to Mr. Sullivan..... 8th April, 1848.  
 4. Do. to Mr. Price..... 15th May, 1848.  
 5. Do. do. do..... 14th June, 1848.  
 6. Do. do. do..... 28th October, 1848.

I shall only add that the Broken Lot in front is literally ruined, and very much reduced in value, as it is occupied by near a score of squatters of the worst description of character, who have robbed it of all the timber, and are now making holes and quarries, carrying off the stones, which constitutes another part of its value. Having submitted the case to Mr. Malloch, M.P.P., with the request he would personally visit the place, I take the liberty of annexing his letter in reply thereto, hoping that you will be pleased to favor me with a reply at your earliest convenience.

I have, &c.,

(Signed,) JOHN ROCHESTER.

The Honorable JOHN ROLPH,  
 Commissioner Crown Lands.

CROWN LAND DEPARTMENT, 21st February, 1852.

Sir,—I have to acknowledge the receipt of your letter of the 16th instant, and upon inquiry find, that although you state that your two petitions to the Governor in Council have not received attention, I find that Orders in Council adopted thereon were communicated to you by letters from this Department, on the 1st and 18th February, 1848, and that your letter of the 8th April, addressed to The Hon. Mr. Sullivan, as Provincial Secretary, was answered also from this Office, on the 20th April, since which time Mr. Durie, under instructions from the Department, has offered to sell the lots to you under Order in Council of the 28th January, 1848, excepting such (being those west of Richmond street) claimed by Mr. Sparks, which offer, it appears, you declined. You will have the goodness now to state distinctly whether or not you are prepared to purchase, otherwise notice will be given that the lots are open for public sale, under the advertisement of the 4th January, 1848.

(Signed,) JOHN ROLPH.

Mr. JOHN ROCHESTER, Nepean.

## No. 83.

BYTOWN, 23rd July, 1852.

Sir,—With reference to my several applications to the Government for the purchase of Broken Lot No. 39, fronting on the Ottawa or Grand River, a Clergy Reserve: I beg leave respectfully to lay before you, for the information of His Excellency the Governor General in Council, the following simple facts:—

I emigrated from England, and purchased about 19 or 20 years ago from Mr. Isaac Firth, the improvements he had made on Clergy Reserve Lot No. 39, in the 1st Concession of Nepean, and Broken Front in front thereof: for which I paid him a large sum of money in cash. I immediately went into possession and have been in possession ever since, until last year, when Nicholas Sparks forcibly fenced a small part of the Lot in question, asserting that he had a claim to the same. A House was built on the Broken Front when I entered into possession, which was

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subsequently burned. I built another house on the Broken Front, which is at present occupied by me, and in front of which I have a tenant.

The Lot 39, in the 1st Concession, was valued under the 25th Section of the land Act, and 4th & 7th Sections of the Regulations of the Department, under Royal proclamation, dated at Windsor, 21st October, 1841, at 50s. per acre, and the Broken Front at 40s. per acre. An Order in Council passed, approved on the 18th February, 1846, allowing Petitioner to purchase at these prices, after being valued on personal inspection by the Government Inspectors appointed in this case: as in every instance in the Province.

Petitioner purchased 39, in the 1st, and paid for it at the valuation in pursuance of the Order in Council. But at this time an application was made by the Rev. S. S. Strong, for the Broken Front as a Glebe or Rectory for the Church of England. The order in Council was rescinded in favor of Petitioner who is a poor man with a large family, and the Lot was ordered, through the influence of designing parties, to be surveyed in Town Lots, valued by the District Agent, and then offered to Petitioner at those prices, and if refused by him, to be sold by public Auction. An absurd and preposterous valuation was put on the Lots in question by the Agent, who obtains a per-centage on sales, and no doubt he was guided in his valuation by the prices obtained in scrip for a piece of land, about a mile and a half distant, called Lot letter O. These Lots were run up by parties who never paid for them, and those unpaid for, were sold again at less than one half what they were bid off at. The Government having, as Petitioner humbly conceives, improperly interfered with the established line of policy pursued in every instance with reference to Clergy Reserves, the right of Petitioner was set at defiance by the most abandoned of characters, who squatted on different parts of the Lot, in defiance of Petitioner and Mr. Durie the Agent, and whose presence in that locality during the resort of the numerous lumber-men, has become so alarming to the surrounding country, that they are not only a perfect nuisance, but a dread to that section. They have cut down all the trees and hacked and destroyed the ground in every direction.

With respect to the Broken Front itself, there are about 22 acres of good land. A great part of the centre of the Lot is flooded every spring by the high water, say about 15 acres; and the remaining part of the Lot is a barren rock; and parties have been this some time past, and are at present quarrying stone in every direction, without reference to the Lots or streets or anything else; and are really, in fact, destroying the whole Lot. All which Petitioner has reason to believe has been represented to your Department long ago. There is not a single post or monument of the survey to be seen.

Petitioner respectfully refers to the Imperial Act 3rd & 4th Victoria, cap. 78; to the Regulations for the Reserves of the 13th July, 1841, and to the respective proclamations of Her Most Gracious Majesty, of the 21st October, 1841, and 10th December, 1842.

With reference to the pretended claim of Mr. Sparks, it really, to say the very least, is unworthy of any remark. If he was to obtain a part of 39, he would not only have his own Lot No. 38, in breadth, but this in addition. The different concessions and Lots in the Townships of the Province never correspond, caused by the unevenness of the ground, &c. His patent to 38 in the 1st, points out the course and bounds of the Lot, and with reference to 38 in the Broken Front, which any surveyor can easily explain. There is not a single Lot in the Township of Nepean, 22 miles in length, that corresponds with the same number in the adjoining Concession, and other Townships are alike.

Petitioner claims his Lot at 40s. per acre, with back rent since occupation or such other reasonable sum as you in Council may see fit, as he has been harrassed long

enough, and will take it with all the disadvantages respecting the squatters and Mr. Sparks, &c., and will be at the expense of ejecting or settling with them.  
All which is respectfully submitted by your obedient Servant.

Honorable JOHN ROLPH,  
Commissioner of Crown Lands.

(Signed,) JOHN ROCHESTER.

### No. 84.

QUEBEC, 28th July, 1852.

We hereby certify that we have been personally acquainted, for many years, with the situation of Clergy Reserve Number Thirty-nine, Broken Front, on the Ottawa River, in the Township of Nepean; that the Lot is in the occupation of Mr. John Rochester, with a house built on the same, and about ten or twelve acres cleared and cultivated. That part of the lot has been squatted on by other parties, we believe, in defiance of Mr. Rochester. That the greater part of the Lot is rock: a great part is overflowed in the spring of the year, and very little good land for agricultural purposes on the Richmond Road; and we consider that the valuation put upon the same by the Government Inspectors, namely forty shillings per acre, was a fair valuation, which we understand and believe was done under oath under the instructions of the department.

(Signed,) JOSEPH AUMOND.  
" JOHN EGAN, M.P.P.

### No. 85.

MEMORANDUM.—No 38, in 1st Concession, and the Broken Front, Nepean, owned by Mr. Sparks, were patented to Robert Randall, as such, with a reservation for a road between them.

No. 9, in the 1st Concession, and No. 9, in Concession A, were described as separate Lots when granted to Captain LeBreton.

C.L.O., August 5th, 1852.

(Signed,) T. C. TARBUTT.

### No. 86.

#### Report on claim of John Rochester.

Mr. John Rochester renews his claim to purchase lot 39, in the broken front of Nepean, (Ottawa Front), as having a right to pre-emption under the Orders of the Queen in Council, 21st October, 1841, and 10th December, 1842, at 40s. per acre, instead of at the valuation as Town Lots, under order in Council of 25th September, 1845.

Reference is requested to minutes in Council of 20th June, and 25th September, 1846, in which the particulars of Mr. Rochester's claim are stated; he having, it

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appears, been placed in possession, in 1838, by Isaac Firth, who, on the 28th April of that year, bound himself to give a transfer deed, "if the original deed can be procured from the Crown;" at which time it would seem that Firth had no pretensions to the broken front, his application to the Government to be allowed to lease or purchase, and which had been refused, having been confined to lot 39, in first Concession.

In recommending, in the Report of 12th February, 1846, that the broken front should be sold at auction, the Department was influenced by the Inspection of 1844, when three acres were reported as cleared and occupied by Daniel McLachlin, but claimed by Mr. Rochester, while other persons had applied to purchase; Lyman Perkins offering £15 per acre.

With regard to Mr. Rochester's claim to pre-emption on account of improvements, it may be remarked that when surveyed by Mr. R. Bell in 1846, it was reported that most of the lot is very closely covered with a second growth of green timber, chiefly pine and cedar, and the only improvements being the land cleared and claimed by Nicholas Sparks, Esquire, of Bytown, and some buildings on the front part reserved for the Department of Public Works; in opposition to which Mr. Malloch now fyles the certificate of Joseph Aumond and John Egan, Esquires. With reference to the claim of Nicholas Sparks, Esquire, notice is requested to the minute in Council of 14th February, 1848, based on the opinion of the Honorable Attorney General.

However, as Mr. Sparks' claim only covered a portion of the land, that is, the Town Lots which were surveyed West of Richmond Street, the remainder has on several occasions been offered to Mr. Rochester, on the terms sanctioned by the minute in Council of 26th September, 1846.

It is to be borne in mind that the lot in question, usually called a broken front, is a distinct lot (consisting of about 40 acres) with a road allowance between it and the lot in rear, purchased by Mr. Rochester, under the order in Council of 1st July, 1846.

Upon looking over all the papers, it does not appear that either Firth or Rochester had any claim to pre-emption, excepting the recognition in favor of the latter, under orders in Council of 25th September, 1846, and 28th January, 1848, to purchase at private sale, at the valuation of the Agent, as Town Lots.

As the case has so often been under the consideration of the Government, some of the Members of which, it may be presumed, are familiar with the particulars of it, the undersigned, as Commissioner of Crown Lands, hesitates to adopt any particular recommendation.

Crown Land Department,  
Quebec, 4th August, 1852.

(Signed,)

JOHN ROLPH.

## No. 87.

Extract from a Report of a Committee of the Honorable the Executive Council on Land applications, dated 5th August, 1852, approved by His Excellency the Governor General in Council on the 7th.

On the application of John Rochester, renewing his claim to purchase the Clergy Reserve Lot No. 39, in the broken front of the Township of Nepean, containing about 40 acres, he having been in possession about 20 years, built a house thereon, of which he is at present in occupation, and is proprietor of the lot in rear.

The Committee recommend that the order in Council of the 28th January, 1848, in favor of the applicant be carried into effect, and that he be permitted to purchase at the rate of 50s. (fifty shillings) per acre, with interest from that period.

It being expressly understood, however, that in the event of Nicholas Sparks, Esquire, or others, claiming through the same title, substantiating his claim to the lot or any part of it, Rochester is not to have any claim against the Government on account thereof.

Certified.

(Signed,)

WM. H. LEE.

To the Honorable  
the Commissioner of Crown Lands, &c., &c., &c.

### Order in Council, 5-7 August, 1852.

"In Committee, 5th August, 1852.

The Committee recommend that the order in Council of the 28th January, 1848, in favor of the applicant [Rochester] be carried into effect, and that he be permitted to purchase at the rate of 50s. per acre, with interest from that period.

It being expressly understood, however, that in the event of Nicholas Sparks, Esq., or others claiming through the same title, substantiating his claim to the Lot, or any part of it, Rochester is not to have any claim against the Government on account thereof.

Approved in Council, 7th August, 1852.

### No. 88.

KNOW all men by these presents, that I, John Rochester, Senior, of the town of Bytown, in the County of Carleton, in the Province of Canada, Yeoman, do hereby by these presents, for a valuable consideration, assign all my right, title, interest, claim, property and demand in and to Clergy Reserve Lot, Broken Front, No. 39, in Concession A, fronting on the Grand or Ottawa River, in the Township of Nepean, in the County of Carleton, in the said Province, to the said John Rochester, Senior, of the town of Bytown, in the said County and Province, Yeoman, and Edward Malloch, of the town of Bytown, in the said County and Province, Esquire, as witness my hand and seal at the City of Quebec, in the District of Quebec, this fourth day of August, in the year of our Lord one thousand eight hundred and fifty-two.

(Signed,)

JOHN ROCHESTER.

Signed, sealed and delivered in presence of

(Signed,)

JOHN DRYSDALE.

DISTRICT OF QUEBEC, } JOHN DRYSDALE, of the City of Quebec, in the Dis-  
to wit: } trict of Quebec, in the Province of Canada, Gentleman,  
maketh oath and saith; That he was present and saw the within named John Ro-  
chester, duly sign, seal, and deliver the within assignment on the other side for the  
purposes therein contained, that it was executed on the day on which it bears date,  
namely, the 4th day of August, in the year of our Lord one thousand eight hundred

January, 1848,  
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and fifty-two, and that the name of this deponent, set and subscribed to the said assignment as a witness thereto, is of the proper handwriting of this deponent.  
(Signed,) JOHN DRYSDALE.

Sworn before me at the City of Quebec, in the District of Quebec, this fourth day of August, A.D., 1852.  
(Signed,) J. MAGUIRE, J.P.

### No. 89.

August, 1852.  
January, 1848,  
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Nicholas Sparks,  
claim to the  
Government

CROWN LAND DEPARTMENT, QUEBEC, 9th August, 1852.  
Sir,—As Lot No. 39, in Concession A, on the Ottawa, in the Township of Nepean, has been disposed of by sale, I beg to submit for the Commissioners, before issuing the Patent, whether any further portion of the land may be required for public purposes than that part (3 a. 3 r. 1 p.) marked on the accompanying Plan.  
I have, &c.,  
(Signed,) JOHN ROLPH.  
The Secretary of the Department of Public Works.

### No. 90.

Mr. Commissioner Young's Opinion.

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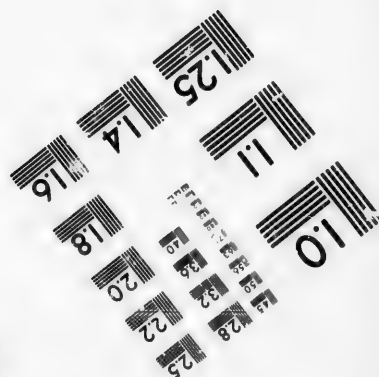
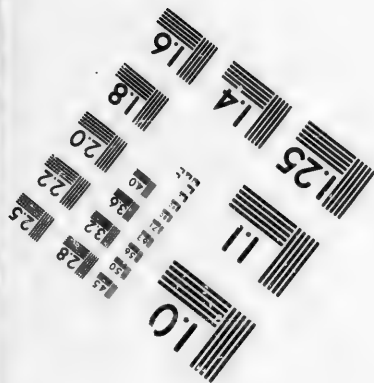
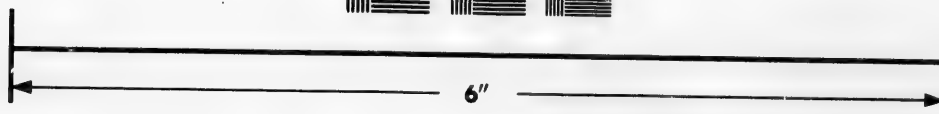
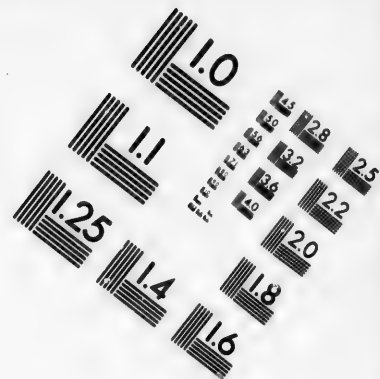
PUBLIC WORKS, QUEBEC, 14th August, 1852.  
Sir,—I am directed to acknowledge the receipt of your letter of the 9th instant, inquiring, respecting the disposal of a lot in the Township of Nepean, and to inform you that as improvements will probably be made in the vicinity referred to, it is of the utmost importance that no grant should at present be made there.  
I have the honor to be, &c., &c., &c.  
(Signed,) THOMAS A. BEGLY, Secretary.  
To the Honorable JOHN ROLPH,  
Commissioner of Crown Lands.

### No. 91.

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gentleman,  
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QUEBEC, 13th August, 1852.  
Sir,—Adverting to the letter of John Rochester, of the 23rd of July last, relative to the much vexed question respecting his right to Clergy Reserve Lot number 39 in Broken Concession A, in Nepean, and upon which an Order in Council issued, approved by His Excellency the Governor General in Council, directing that the lot should be sold to him, at 50s. per acre, with interest from 28th January, 1848.  
The undersigned begs respectfully, for the information of His Excellency the Governor General, to make the following statement:—It appears His Excellency





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in Council was graciously pleased, after mature consideration, and upon investigating the various correspondence, to recognize the right of Mr. Rochester to the purchase of the lot in question, in pursuance of the established regulations of your Department, under the Queen's proclamation of the 21st October, 1841, and 10th December, 1842.

Mr. Rochester has been for many years put to very great inconvenience and expense, having expended upwards of £250, which he is prepared to prove upon oath; in consequence of which he became greatly embarrassed in his circumstances.

In pursuance, therefore, of the Order in Council, and in faith of the Government, Mr. Rochester sold to Edward Malloch a part of his interest in the premises, which assignment was duly registered in the Department. That the money was all paid for the lot, and the sale carried out and duly entered in the reference book for patent; that the lot is at present described; all which is matter of Record.

The undersigned was extremely anxious to obtain the patent, inasmuch as various parties had entered forcibly in defiance of Mr. Rochester and the Government upon the lot, and were committing great injury to the property, besides being a perfect nuisance in that section of the country.

That when the description was completed, it was stayed by direction of Dr. Ford, by a simple dash of a pencil writing "Stayed," and on being asked by Mr. Malloch by whose authority this was done? he simply stated—and it must be admitted not in an offensive style—that he did not know that he was obliged to say by what authority. On reference to you, however, a letter was forwarded to the Honorable Commissioner of Public Works, stating that the lot was sold, and writing to be informed officially what was required by that Department. That on the subject being brought before the Honorable Mr. Killaly, the Engineer, he informed the undersigned that it would be all settled to our entire satisfaction, so soon as Mr. Young returned from Montreal, as he had written him a letter to the effect that he had arranged, that if a clause was inserted that if the Government should decide within six months to construct a Canal up the Ottawa, that the land for the cut through the lot should be obtained for the original cost.

That in pursuance of such statement and on the faith of the Government, the undersigned went home last Monday evening, but on arriving at Bytown, found that the damage that is still being done to the premises is so very great, that they resolved to return for the Patent, to prevent the trespassers, in a legal manner, from doing further damage.

That they arrived here this morning, and found, to their utter mortification, that the Honorable the Commissioner of Public Works had replied to your letter, as we understand, recommending that the lot should not be parted with, notwithstanding his being informed that the lot had been sold.

It is, we think, deeply to be regretted, that you considered it necessary to address the Board of Works on the subject; for the matter had been referred by your Department before, and an official reply obtained that all that they required was 3 acres, 3 roods, 1 perch, which was set apart and marked on the office plan. The undersigned do not desire to presume to make any comment on the facts connected with the above simple statement of the case; that is for the Government to do. But they desire not only in the most solemn manner, but in the most respectful manner, to enter their protest against the course that is being pursued in the premises.

They desire therefore protection.

They cannot however refrain from respectfully stating that, from the very first, some hellish back-stairs influence appears to have been used; for, adverting to the survey of this man's premises it did not originate with your Department, and was

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never known until ordered; and, step by step, in defiance of the undersigned, and in defiance of the Government, opposition has been met with.

The undersigned was here from the 24th July to last Monday evening, the 9th instant, and are now here waiting your pleasure.

All which is respectfully submitted, by your obedient Servants,

(Signed,)

JOHN ROCHESTER,  
EDWARD MALLOCH.

The Honorable JOHN ROLPH,  
Commissioner of Crown Lands.

## No. 92.

Mr. McLachlin, M.P., and Mr. Bell, Surveyor, Bytown, to Crown Lands Commissioner.—39, Concession A, required for Public Works.

RUSSELL'S HOTEL, QUEBEC, 18th August, 1852.

Sir,—With respect to Broken Lot No. 39, Concession A, on the Ottawa, in Nepean, I would most respectfully beg to draw your attention to the necessity of reserving ample space on the entire water frontage thereof, for the use of Rafts, this space being on a Bay of the River, at the head of the Bytown slides, is indispensable to the Lumberers, who bring their rafts here to pass down the slides, and in my opinion there would be no great difference in effect, between excluding rafts from the Bay, and excluding them from these slides altogether. Rafts are made fast in this Bay for safety and convenience, till they can be passed in single cribs through the slides, and if they were not allowed to land here, the Lumberers would be put to the expense of running their timber in single cribs from the Chaudière Lake to the foot of the slides, and in case of a South or South-East winds, their being obliged to go below this Bay, would incur extreme risk of life and property, as the timber would be carried over the Falls. During the whole of the season for passing timber, this Bay is filled with rafts, and if excluded from the free use of it, the Lumberers would meet the deprivation with loud and bitter complaint, and would they not have great cause of complaint? After paying heavy charges for slidage and dues, are they not fairly entitled to the facilities essential to the use of the slides? You will pardon me for thus urging the matter on your consideration. Respecting the grounds of grievance, I speak from personal knowledge, and the right of the Lumber trade, to claim fair protection from the Government, to whom they pay heavy imposts, will not be questioned.

I would also beg to point out the probability of a Canal being carried around the Chaudière Falls, at some time, to connect the navigable part of the Ottawa, below Bytown, with the navigable waters of the Ottawa, above these Falls, and to state that the only favorable site for such Canal, is that afforded by the low ravine crossing this Lot, and No. 40, adjoining it, and ending at the Bay referred to.

I have the honor to be, Sir,

Your most obedient Servant,

(Signed,) ROBERT BELL.

Honorable JOHN ROLPH,  
Commissioner of Crown Lands,  
Quebec.

## No. 93.

QUEBEC, 18th August, 1852.

Sir,—I have heard it rumoured that Lot No. 39, in Concession A, of Nepean, is about to be sold to Mr. Rochester, without the necessary reserve for public purposes, I was very much surprised at this, and cannot believe it possible that the Government would, unless under some very great misapprehension dispose of that which would immediately have to be bought back for Public purposes, at any price :—

The timber passing through the Government slide, must lay in a great body along the shore of said Lot, waiting its turn to enter the slide, and at least ten thousand Raftsmen, in the course of the season, must attach their Timber in the Bay of said Lot, awaiting their turn to pass the slide; and they must use the beach for the purpose of landing their oars, which they have to cast to the head of Rapid above the slides; it will also be required for camping ground, and several other purposes connected with the trade. Neither is there any other landing place for any lumber, &c., coming down the River for the use of the Town; also, in the event of a Canal ever being constructed to pass the falls at Bytown, must necessarily pass through this Lot. Better reserve it now, than have to purchase it at some enormous price hereafter.

Your's respectfully,

(Signed,) DANIEL McLACHLIN.

To Honorable J. ROLPH,  
Crown Land Office, C.W.

## No. 94.

The River Ottawa is between seven and eight hundred miles in length, discharging the waters of an area of nearly eighty thousand square miles. It now admits of an uninterrupted Steamboat Navigation from Lachine to Bytown, 114 miles. The obstructions presented by the rapids, being overcome by Lock at St. Anne, and the Carillon, Chute à Blondeau, and Grenville Canals. Between Bytown and Aylmer, a distance of eight miles, the Chaudière Falls, and DaChere rapids intervene, interrupting the navigation. A Steamboat plies from Aylmer to the Chats rapids, about twenty-two miles, where there is a portage of three miles, and from thence there is a Steamboat navigation to Portage du Fort, a distance of about thirty-two miles. Above Bytown, the Ottawa has a course of over six hundred miles, draining an area of fifty-four thousand square miles, on which, by the lowest calculation, there are now standing three hundred millions of tons of marketable timber, for the transport of which the Ottawa and its principal tributaries in this part of its valley, afford two thousand five hundred miles in length of water fit to carry timber. It now contains a population of one hundred and thirty-six thousand, which, if it doubles every fifteen years, (a reasonable expectation,) will in forty-two years, exceed one million of souls.

The settlement of the valley of the Ottawa above Bytown, where the operations of the lumberer and the farmer, mutually aid each other, would proceed much more rapidly, if, by the construction of Canals, a continuous Steamboat navigation, without transhipment, was obtained.

About two miles and a half of Canal would be required between Bytown and the head of the DaChere rapids, with a rise of sixty-three feet, three miles at the Chats rapids, where a natural ravine would materially aid in the construction, the rise is

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here about fifty feet, the construction of these Canals, would extend the uninterrupted navigation of the Ottawa 65 miles, making a total distance of 180 miles from Lachine.

When the increase of the expenditure warranted the expenditure, the improvement of the navigation might be extended from Portage du Fort to the Joachim Falls, a distance of about 80 miles. A large portion of the first ten miles, where there is a rise of sixty-five feet, would require to be canalised; on the remaining seventy miles, passing through Allumettes Lake and Deep River, with the exception of one, or perhaps two Locks, at Allumettes Island, no improvement would be necessary.

From the Joachim Falls to the bend of the Long Sault, a distance of about eighty-seven miles, the navigation is impeded by several rapids, which would require from 15 to 20 miles of Canal; the rise on the parts requiring improvement being about 180 feet.

From the head of the Long Sault to the head of Lake Temiscamang, a distance of sixty-seven miles, the navigation is without obstruction.

The greater part of the information contained in this memorandum, is taken from the Report of the Provincial Geologist, W. E. Logan, Esquire, for the year 1846, to which I beg leave to refer for details.

QUEBEC, 19th August, 1852,

(Signed,) ANDREW RUSSELL.

## No. 95.

(Copy.)

EXTRACT.—Order of the Queen in Council, 21st October, 1841, as amended 10th December, 1842, based on Imperial Statute, 3 & 4 Vic. cap. 78, sec. 1. Ninth clause, authorising pre-emption of occupants to purchase Clergy Lands when offered for sale, on certain conditions.

That when any of the said Clergy Reserve Lands shall be offered for sale, which have been leased, and when any of the said lands offered for sale, shall have been improved without authority, for the space of five years, next before the first day of January, in the year of our Lord one thousand eight hundred and forty-one, the Agent for the sale of the said Clergy Reserves, shall allow privilege of pre-emption to the lessees, or their assignees for, or in case there shall have been no lease to the occupant, for the space of twelve calendar months after such lands have been offered for sale; and that in case of any sale to such lessees or occupants, interest upon the purchase money, at the rate of six per cent. per annum, shall be added thereto, from the time the lease of such lands expired; or if there shall have been no lease, from the time of such occupation as aforesaid, as the same may be reported by the inspectors, and that the value of the improvements made upon such lands, shall not be charged or demanded as any part of the purchase money.

See Canada Gazette, of 15th July, 1843.

## No. 96.

REPORT on Mr. ROCHESTER's Petition to purchase Lot No. 39 in Concession A, Ottawa front of the Township of Nepean.

As the claim to this Lot has been so much urged in connexion with Lot No. 39

in the first Concession, it may be proper to give a brief review of the circumstances connected with both of these lots.

Both lots were first leased to Robert Randall, in 1809, and upon expiration of his lease, renewal thereof was refused, on the ground that these lots were required for public purposes.

Lot No. 39, in the First Concession, was occupied for a long period by Isaac Firth, not as a squatter, but as a temporary occupant, by permission, of a lot required for public purposes; he frequently applied to purchase, but was uniformly refused, on the ground that the lot was required for public purposes.

Mr. Rochester purchased Mr. Firth's claim in 1838, and finally, by Order in Council of 1st July, 1846, after what was required of that lot had been set apart for the public service, he was allowed to purchase the residue; not in virtue of Firth's pre-emptive claim being admitted, but because he, Rochester, had made valuable improvements: this is not the lot for which he now makes application, being wholly distinct and situated in a different concession: to this lot he has obtained a title already.

Lot No. 39 in Concession A, for which Mr. Rochester now makes application, was included in Robert Randall's application for renewal of lease, and was refused, on the ground that it was required for public purposes.

It was not included in the permission to Firth to occupy, neither was it ever petitioned for by him.

It was included in Rochester's Petition, in 1844, and this was the first time it had been claimed in any way, since, by Order in Council of 24th April, 1833, it was finally refused to Robert Randall, as being "indispensably necessary for the public service." The Department reported against the application on this occasion, but the Council granted it, by Minute dated 17th February, 1846; this Order was, however rescinded, on the ground that Rochester had no claim, and the lot was surveyed into Town Lots, and advertised for sale by auction.

Finally, Mr. Rochester was allowed, by Order in Council of 28th January, 1848, to purchase at the actual valuation of the Town Lots, on condition of completing the purchase within a given time. There do not appear to have been sufficient grounds for withdrawing the lot from public sale, no pre-emptive claim having either then, or at any previous period been recognized on the part of Messrs. Rochester or Firth. This Order was suspended in regard to a part of the lot claimed by Mr. Sparks, but repeatedly offered to be carried out in respect to the residue. It was not, however, accepted by Mr. Rochester, who has petitioned to purchase on the terms of the Order in Council of 17th February, 1846, which has been repeatedly shewn, by subsequent Orders in Council, to have been erroneously made in his favor. By this course, Mr. Rochester has placed himself in a position which defeats any claim based on the Order he has rejected, and places the lot again at the disposal of the Government.

It may here be remarked, that no evidence of any valuable improvements has ever been submitted; in fact there are none of any importance; the lot has not, therefore, attained its present value through any exertion or expenditure on the part of Rochester or Firth: it has grown in value by the growth of Bytown, of which it forms a part; and, instead of there being any improvement upon it to enhance its value, it has been in a state to operate as a serious draw back to the value of property in its vicinity; it is now being again enhanced in value by the sale of the valuable water privileges adjoining it, by the Department of Public Works. Although Mr. Egan and Mr. Aumond, in a certificate, not under oath, state that they believe that forty shillings per acre was a fair valuation at the time of the Clergy Reserve inspection, and that Mr. Rochester has a house, and ten or twelve acres of clearing upon the lot; yet this is wholly opposed to the testimony of the

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sworn Surveyor who laid it out into Town Lots, and the valuation of the Local Agent; it is also opposed to the general testimony afforded to the Department, and to the offer of Fifteen pounds per acre, actually tendered to the Department about that period.

It is also to be observed that, by the regular Clergy Reserve Inspection, Mr. McLachlin was returned as the occupant, with three acres cleared. One of the Inspectors, indeed, sent in a note, dissenting from their joint report in this particular, but the grounds of dissent are wholly unsatisfactory and insufficient. By the laws, regulations and proclamations to which the Petitioner has appealed, not he, therefore, but Mr. McLachlin, would be entitled to pre-emption. There was no occupation, however, as would entitle any one to be ranked as a settler. A further document from the dissenting Inspector, Mr. Roberts, accompanies Rochester's Petition of 11th February, 1848, in support of most injurious insinuations made against his colleague, Mr. Chitty, who appears to have taken no part, one way or the other, in the matter beyond the joint official return by himself and colleague. It is much to be regretted that these libellous documents, less calculated as they are to convince, than to excite suspicion in their motive, against the character of a person of respectable standing in the community, who is in the dark as to their existence, and was never expected to have an opportunity to rebut them, were ever resorted to or permitted to be filed or recorded in the Department.

Mr. Rochester's claim has been chiefly based, however, on the assumption that the Lots in Concession A, are merely broken fronts of the Lots in the first Concession; this, however, is untenable, as the first Concession and Concession A are as distinct as any two concessions in the Province, with a full allowance for a concession road between them, which is now, between these lots, used as the main road leading West from Bytown. The lots are not even directly opposite each other. This part of the subject cannot be better disposed of than by reference to Mr. Rochester's own remarks upon Mr. Spark's claim, in his communication of 23rd July, wherein he utterly repudiates the pretence of the two concessions having any identity or connexion with each other. Thus it seems Mr. Rochester has set forth, as his main plea to establish his pre-emption that these concessions are one, while he sets forth as his sole plea against Mr. Sparks, that they are two.

Messrs. Rochester and Malloch's communication of the 13th instant, now remains to be considered.

The Order in Council of 5th August, 1852, has reached this Department, but has never been communicated to Mr. Rochester; and if its contents have become known to him, it must have been in some unofficial way. Mr. Rochester, by the hands of Mr. Malloch, sent in to the Accountant the sum of £92 12s. 6d. on the purchase money; the description was commenced, but has been stayed, and the amount is still subject to Mr. Rochester's order. It is a frequent occurrence in this Department, that matters are stayed under these circumstances; an incidental knowledge of such an Order in Council, and a payment to the Accountant, in anticipation of a deed, cannot, and in this Department, never has been regarded as constituting a claim, when further deliberation and information have indicated sufficient grounds for a contrary decision: (instance the case of Campbell and Armstrong, in which the claim of the former to purchase, by Order in Council, was recently reversed in favor of the latter.)

In the present instance, the matter was urged on with undue haste, at a moment when the Commissioner was fully occupied with other matter of an important nature; and it was only when it was nearly consummated that he became aware that no sufficient reservation had been made for public purposes of an indispensable character. He therefore felt it incumbent upon him to stay further action, until the Report of the Commissioners of Public Works on the reservations necessary to be made for public purposes, could be obtained.

The Report now received from the Department of Public Works, states that, with a view to probable public improvements, "it is of the utmost importance that no grant should at present be made." This is further corroborated by the general testimony afforded to the Department, in evidence whereof a letter is herewith submitted, from D. McLachlin, Esquire, Member of Parliament for the Town of Bytown; and one from Robert Bell, one of the ablest Surveyors in the Province, and a resident upon the adjoining lot. Herewith also, is a memorandum from Mr. Surveyor Russell, shewing the extent and importance of the navigation on the Ottawa which a few small links of canal would open up, one of the smallest but most important of which would cross this lot. It is evident that a sufficient reservation round the bay for rafts entering the Government slides, absolutely cannot for a moment be dispensed with; and if there be a present, or even a comparatively remote probability of a canal passing through the lot, the expediency of which is so forcibly maintained, it would be a short-sighted policy that would deprive the public of the means now at the disposal of the Government for effecting it.

The Commissioner of Crown Lands, therefore, feels it to be his duty, however reluctantly, to recommend that all past Orders in Council, in reference thereto, be cancelled, and the lot reserved, as originally intended, for public purposes.

The public interest would seem to require this under any circumstances, and in the present instance, it entails no individual hardship, as no such improvements or occupation of any kind have ever been proved as would, even if the lot had not been reserved for public purposes, have constituted a title to pre-emption.

All which is, nevertheless, respectfully submitted.

(Signed,) JOHN ROLPH.

Crown Lands Department,  
Quebec, 24th August, 1852.

## No. 97.

Petition of W. Thompson and others.—Iniquitous Expedients to the Injury of Mr. John Rochester.  
To His Excellency the Earl of Elgin and Kincardine, Governor General of British North America, &c. &c. &c.

The Petition of the undersigned inhabitants of the Township of Nepean and other places on the Ottawa River, now in the City of Quebec;

Humbly beg leave to represent:

That they have been acquainted with John Rochester for a period of about twenty years, and that they are aware of the circumstances under which the said John Rochester purchased the possession and right of Isaac Firth, of Lot No. 39, Clergy Reserve, with its Broken Front in the Township of Nepean, and of his having possession of the same, and of his having built and improved on the said Broken Front.

That the undersigned do not affect to be ignorant of the most extraordinary and iniquitous expedients which have been resorted to by those who attempted to instigate the Government to deprive him of his right of pre-emption; the circumstances connected with which were notorious at the time they transpired.

Your Petitioners recently heard with much satisfaction, that Your Excellency in Council recognized the claims of the said John Rochester, and confirmed them by an Order in Council. Whereupon, the purchase money of the Broken Front in question was paid into the Crown Land Department, and the description issued.

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It is with deep regret that they now understand that the efforts of his enemies seems to have so far succeeded as to induce the Board of Works to allege that the said lot may at some future unknown period be required.

On this point, your Petitioners would only remark, that the Board of Works have heretofore reserved of this lot what they deemed might be necessary for future uses, and they merely believe that the present objections are raised through the instrumentality of certain individuals, in order to favor the views of those who wish to deprive him of his just claims.

Your Petitioners can most truthfully aver, that they verily believe, that obtaining the lot in question gratis would not compensate the said John Rochester for the delay, trouble, vexation and expense to which he has been subjected.

And further, they have reason to believe, that the said John Rochester, upon the faith of Your Excellency's Order in Council, was obliged, in order to relieve him from pecuniary embarrassment occasioned by the disappointments he experienced, to encumber the said claim; and which, if attempted to be cancelled, would involve him in ruinous difficulties.

Wherefore, your Petitioners most humbly pray Your Excellency to interpose your authority, and be graciously pleased to carry out the Order in Council referred to, by directing the Patent to issue.

And, as in duty bound, your Petitioners will ever pray.  
Quebec, August 26th, 1852.

(Signed,)

JOHN THOMSON,  
JOHN SUPPLE,  
WILLIAM STEWART,  
RICHARD McCONNELL,  
WILLIAM BYERS,  
DAVID J. BROWNE,  
E. P. WILLIAMS,

(Signed,)

JOHN EGAN, M.P.P.,  
JOSEPH AUMOND,  
PETER MORRIS,  
JOHN MORRIS,  
GERRARD McCOEN,  
T. McKAY, L.C.,

## No. 98.

Petitions—Messrs. Gilmour & Co., and others, Bytown, and of the Magistrates of Bytown, remonstrating against grant to Mr. Rochester, Lot 39, A, wanted for public service.

MEMORANDUM.—How does No. 33, Broken Front, Concession A, Township of Nepean, stand? and how was No. 35 and 36 granted to Jennett Strothers, and what grounds of claim, No. 37 to Thomas Reid, of the same concession and Township.

WM. SPRAGGE, Esquire,  
Crown Land Department.

(Signed,) WM. H. LEE.

## No. 99.

Lot No. 33, Concession A, is a Clergy Reserve, and was reported by the Inspectors in the year 1814 in occupation by James Swain, with 20 cleared: the land

good; value 15s. per acre. No sale has been made, and the occupant was willing to pay but 4s. 2d. per acre, the lot is  $2\frac{1}{2}$  miles from Mills.

Lots No. 35 and 36, in the Broken Front, Concession A, on the Ottawa, were described for Patent, about the year 1798 to Janet Strothers on her own U.E. claim. The grant is bounded by the shore of the Ottawa River.

Lot No. 37, in Concession A, was described for Patent, 17th April, 1824, to Lieutenant Thomas Reed of the Royal Marines, under order in Council of 4th February, 1824. The grant is bounded by the water's edge of the Stream; reserving "free access to the Beach for all vessels, boats or persons."

### No. 100.

To His Excellency the Right Honorable James, Earl of Elgin and Kincardine, Knight of the Most Ancient and Most Noble Order of the Thistle, Governor General of British North America, &c. &c. &c.

IN COUNCIL.

The Memorial of the undersigned, Merchants of Bytown, engaged in the Lumber trade;

HUMBLY SHEWETH:

That Your Memorialists are informed that proposals are being entertained for the sale of the Clergy lot within the limits of Bytown, known as Lot No. 39, in the Broken Front, Concession A, on the Ottawa, in Nepean.

That Your Memorialists beg most respectfully to draw attention to the necessity of reserving ample space on the entire water frontage of the said lot for the use of the Slides, and the rafts which come here for passage through those Slides, as in case of a sale without such reserves, the hindrance of the free use of the Bay in front of the said lot and of the Slide would be almost the same in effect as closing the Slide from use altogether; and to obtain the requisite space by re-purchase as would be absolutely necessary, would in all probability be attended with trouble and great expense. During the season of passing timber, this Bay is constantly filled with rafts waiting to be passed, crib by crib, through the Slides.

Your Memorialists humbly conceive, that in view of the heavy charges to which the Lumber trade is subjected for Slidage and other dues, those engaged in that trade should be protected so far as to be allowed the facilities essential for the use of the Slides. And they therefore humbly pray that Your Excellency will hinder any sale of the said lot in which the said Reserves are not made.

And your Memorialists, as in duty bound, will ever pray.

Dated at Bytown this 4th day of September, A.D., 1852.

(Signed,)

GILMOUR & Co.,  
JOHN WM. HAMILTON,  
DONALD M. GRANT,  
JOHN O'MEARA,  
H. V. NOEL,  
P. ROBERTSON,  
WM. H. ROBINSON,  
J. MACKINNON,  
JAMES FRASER,

(Signed,)

N. BURWASH,  
HORACE MERRILL,  
THOMAS M. BLASDEE,  
EDWARD MCGILLVRAY,  
JAMES READ, per  
G. KING,  
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JOSEPH AUMOND, per  
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WILLIAM MACKAY,  
ROBERT FARLEY,  
EDWARD DUFTON,

B. GORDON,  
JOHN CHITTY.  
W. B. LEWIS,  
WADDELL & MACNEE,  
JOHN MCCARTHY,  
ROBINSON LYON,  
ROBERT SKEAD,  
WILLIAM REID.

## No. 101.

To His Excellency the Right Honorable James, Earl of Elgin and Kincardine,  
Knight of the Most Ancient and Most Noble Order of the Thistle, Governor General of British North America, &c. &c. &c.

The Memorial of the Undersigned Magistrates of Bytown;

IN COUNCIL.

HUMBLY SHEWETH:

That Your Memorialists are informed that it is proposed to make sale of the Clergy Reserves Lot within the limits of Bytown, known as Lot No. 39, Broken Front, Concession, A, on the Ottawa, in Nepean, at 40s. per acre, and as the said lot contains nearly forty acres, the said price with charges for rent, it is believed will not much exceed one hundred and ten pounds currency.

That Your Memorialists know the premises in question, and they consider that the actual value of the said lot No. 39, is not less than five thousand pounds currency; and they respectfully beg to draw attention to the public wrong which would be done by granting the said land at a price which is so disproportionate to its real value.

That in case of sale under any circumstances, your Memorialists would beg to urge the necessity of reserving ample space on the entire water frontage of the said lot for the use of the public works, and for the use of the rafts which come to this place to pass through the Slides. The free use of the Lot in front of the Bay is indispensable to the Lumberers who use the Bytown Timber Slides; and they would also beg to state, that a reserve should be made of the piece of land crossing the said Lot, which affords a favorable site for a Canal to pass the great Chaudière Falls. Which improvement your memorialists hope to see sooner or later carried into effect, to connect the navigable waters of the Ottawa below Bytown, with those above it, and this being the only place practicable for that purpose; if this site be now granted the repurchase when required will incur an immense sacrifice.

Your memorialists therefore humbly pray that your Excellency will be pleased to hinder any sale of the said Lot, at a price below its actual value, unless the party claiming establishes a good right to the said land at such low price. And they also beg to request that any sale of the said land may be by public competition, and that under any circumstances ample reserve be made for the purposes above stated.

And your memorialists, as in duty bound, will ever pray.  
Dated at Bytown this 4th day of September, 1852.

(Signed,)

JOHN PORTER, J.P.,  
R. H. THOMPSON, J.P.,

(Signed,)

ARCHIBALD FOSTER, J.P.,  
ALEXANDER WORKMAN, J.P.,

GEORGE PATTERSON, J.P.,  
R. W. SCOTT, J.P.,  
DONALD M. GRANT, J.P.,

ROBERT BELL, J.P.,  
HAMNETT HILL, J.P.,  
ISAAC SMITH, J.P.

## No. 102.

1st Petition of City of Bytown.—Lot 39, A, in part, required for public uses.

To His Excellency the Right Honorable James, Earl of Elgin and Kincardine, Knight of the most ancient and most noble order of the Thistle, Governor General of British North America, &c. &c. &c.

The Memorial of the Town Council of the Town of Bytown;

IN COUNCIL.

HUMBLY SHEWETH :  
That your Memorialists are informed that proposals are being entertained for the sale of the Clergy Reserve Lot within the limits of Bytown, commonly known as lot Broken Front, No. 39, in Concession A, on the Ottawa, in the Township of Nepean, and they would respectfully beg to draw attention to the absolute necessity of retaining in the hands of the Government ample space around the Bay of the Ottawa River in front of the said lot, as such space is indispensable for the use of the rafts coming here to pass through the slide immediately adjoining, part of which slides is also on the front of this lot. In this Bay, rafts are made for security and convenience, and during the season of passing timber, it is constantly filled with rafts, waiting till they are taken off in single cribs to be passed, and to deprive the Lumberers of the free use of this Bay and Slide, would be almost the same in effect as closing the Slide altogether.

And your Memorialists humbly conceive that inasmuch as the Lumber trade is subjected to heavy charges for timber dues and slidage, it is fairly entitled to claim protection in the enjoyment of the facilities essential to the use of these slides. That free access to the River, at the front of this lot, is absolutely necessary for the convenience and wants of a great portion of the population of Bytown, as it is the only place where the water is easily approached, and in consequence is the place where water from the river is now obtained for the use of Upper Town, and a sale without reserving such access would subject nearly one half of Bytown to a deprivation which would be quite intolerable.

That this part of the river edge is the only place where Lumber for the use of the town can be conveniently landed from the Ottawa River, and in that respect it is a matter of importance to the town, that ample space be reserved on the entire water frontage of the said Lot.

That in the event of a Canal being made to connect the Navigable Waters of the Ottawa below Bytown, with the Upper Ottawa Navigation—an improvement which your Memorialists hope to see at no distant day effected—the only practicable site for that purpose is the one which crosses this lot, and it is exceedingly favorable.

That the granting of the said lot without such reserves being made would be severely felt and greatly complained of by the Lumber trade, and be deeply injurious to this town.

Your Memorialists, therefore, humbly pray, that Your Excellency will be pleased to hinder any sale of the said lot, unless there be reserved therein a large space on the entire Water Frontage, for the purposes above stated, and also sufficient space at the proper place for canal purposes.

Honorable L  
Sir,—I have  
urged to do  
wards of two

Dated at Bytown, in Council, this 6th September, 1852.

(Signed,)

R. W. SCOTT, Mayor.

Certified.

(Signed,)

E. BURKE, Town Clerk.

## No. 103.

Mr. Rochester to Mr. Secretary Morin, casting foregoing "Remonstrances with contempt to the winds."

Honorable A. N. MORIN.

QUEBEC, 14th September, 1852.

Understanding that three Petitions have lately been forwarded to His Excellency the Governor General, remonstrating against the sale that has been made to me of Lot number 39 in Broken Concession A, Township of Nepean, I beg respectfully to inform you, for the information of His Excellency the Governor General in Council, that, although I have no means of finding out the purport of the three Petitions, I understand they are, one from the Town Council of Bytown, one from the Magistrates of Bytown, and one from the Lumbermen.

I beg leave to remark, that with respect to the one from the Lumbermen, the principal Gentlemen concerned in the lumber trade are now in Quebec, and have signed a Memorial in my favor; with respect to the one from the Magistrates of Bytown, and the one from the Town Council, I may remark, that when the County was set apart from the District of Bathurst, the Magistrates certified to the Governor General in Council, about 1842, that the Jail and Court House was finished, and in a fit state to receive prisoners; and this was done before the foundation was dug.

With respect to the one from the Town Council, I may observe, that shortly before the last 12th July, the Government was induced to send up troops, to preserve order; and on the 11th the Town Council met, and passed, unanimously, a Resolution, condemnatory of the Government, for sending the troops, which some of the Council themselves were instrumental in obtaining.

I cast these remonstrances with contempt to the winds. I would respectfully ask: Have I right? Am I to be robbed? If I am entitled to rights as a British subject; I have confidence, and trust that I am dealing with a Government who are both just and upright, and who will defend every subject in his just rights, no matter however humble he may be.

All which is respectfully submitted by your obedient Servant,

(Signed,)

JOHN ROCHESTER.

## No. 104.

Honorable MALCOLM CAMERON.

QUEBEC, 12th October, 1852.

Sir,—I hope you will pardon me for intruding on your valuable time; but I am urged to do so by the man Rochester, who is still here, and who has remained upwards of two months, in hopes of obtaining a favorable decision on his long pending

case, respecting the broken front No. 39, on the Ottawa River, in Nepean. I am induced to do so, from the circumstance of a Memorial which was handed to His Excellency in Rochester's favor, having been laid aside or mislaid, and which was signed by several respectable parties.

I beg leave respectfully to inform you, for the information of the Honorable the Executive Council, that Rochester is now peculiarly situated; for, after the Order in Council passed, he bargained and sold to me a part of his interest in the lot, and which was done with the knowledge of the Department. An assignment given me of a part of the interest for a very valuable consideration in cash, and which was duly registered in the Crown Land Department, in pursuance of the Land Act. After the Order in Council passed, and after the Order was entered in the books, the price of the lot ascertained, the interest calculated by the Accountant, the money paid as directed into the Bank of Upper Canada, the receipt deposited by me personally, and entered in the account-book by the Accountant, the sale carried out, the lot for description entered in the reference book, and the description issued for Patent; all which could not have been done till the sale was completed.

I may remark here, that when I saw the Order in Council after it was entered, I informed the Accountant that there were about three acres that should not be paid for, belonging to the Board of Works, so that there was no intention to mislead the Government.

Now, if you would allow me to speak plain, which I desire to do respectfully, I cannot understand for the life of me why there should be such hesitation in doing this man justice, or such a seeming determination to pursue a different course in this instance, contrary to the established rule or custom of the Department under similar circumstances. The principal lots of the said Township, both on the Rideau and Ottawa Front, are described from the River, including the broken fronts, and running into the next Concession, which I can point out in fifty different instances; and I may name the lot itself, and lots 38 and 40, which were described as lots 38, 39 and 40 in the first Concession, with the broken fronts thereof.

This lot was at first reserved for public purposes, but not in connexion with the local Government, but for the use of the Rideau Canal; but on inspection and survey, it was found impracticable to construct the Canal through the rapids of the Chaudière, it was consequently constructed, commencing below Bytown, into the Rideau River. Before this decision was come to, Firth made application, through Lord Dalhousie, and was permitted to enter into possession and occupy the Clergy Reserve adjoining the Richmond Landing, as will be seen by his application of 20th March, 1824; Major Hillier's letters to Major Burke, 4th February and 27th March, 1824; and Despatch, Sir P. Maitland to Lord Dalhousie, dated 9th April, 1824, of which several communications the Department ought to have been aware of before the Honorable the Commissioner came to such a positive decision, that Mr. Rochester had no right of pre-emption, or that Mr. Firth had no authority to occupy and enter into possession, in the first instance.

I have no fault to find with any member of the Government; but I regret to say, that underlings seem to have the power to do as they please, in direct opposition to the views of the Government, deliberately sanctioned by His Excellency the Governor General. When the Patent was stayed, I have reason to believe that a hint was given to the Honorable Mr. Young, to request the lot to be retained, and I have heard that the Honorable Mr. Young requested Mr. Bell, the Surveyor, to write him a letter on the subject, who was at the time at Russell's Hotel. This information I have from Bytown; and also, that a young man by the name of Dawson, of the Crown Lands Department, was seen closetted repeatedly with Bell, Russell, Sparks, and McLachlin, who, immediately on their return to Bytown, set to work in getting up Petitions, which were referred to in Rochester's letter, of the 14th September, before the Petitions arrived.

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I am aware that the Government, at this time, must be very busy; that in fact, they have hardly time to breathe, but it would be really an act of charity to take up this case and let the man home.

May I, therefore, request you to speak to Dr. Rolph, and endeavour to get the matter brought up. In a conversation I had with Mr. Commissioner Rolph, after the Patent was stayed, he remarked, that he had nothing to report, but the mere simple fact of the lot having been disposed of, and the patent stayed; that he would request Mr. Tarbutt to draw up a short report, which I understood he did. But I have heard from Bytown, that several parties have been boasting that the whole papers had been handed Mr. Dawson, to frame a Report, and that such a coloring had been put on the case as would ensure further difficulties.

I trust, however, that further difficulties will not be thrown in the way, and that the case may be soon favorably entertained.

I beg respectfully to refer to the accompanying copies of Major Hillier's letters to Major Burke, of 4th February and 27th March, 1824; and Despatch, Sir P. Maitland to Lord Dalhousie, dated 9th April, 1824, and also, to the former affidavits and certificates, and the accompanying affidavits of Heney, McLachlin, Sparks, &c., which were fyled before.

I have the honor to be, Sir,

Your obedient Servant,

(Signed,) EDWD. MALLOCH.

### No. 105.

I, EDWARD HAWKINS, of the Town of Bytown, in the County of Carleton, Laborer, maketh Oath and saith; That several years ago, whilst in the employ of Mr. Rochester, I cleared, fenced, ploughed and planted a portion of the Broken Front of Lot Number thirty-nine, Clergy Reserve, in the Township of Nepean; and further, this Deponent saith, That he knows that John Rochester was in possession of the said Broken Front for several years before the period alluded to, and that he erected buildings on the premises, and has had a continuous possession up to this period.

(Signed,) EDWARD <sup>his</sup> ~~X~~ HAWKINS.  
mark.

Sworn before me at Bytown, this 11th day of October, A.D., 1852.

(Signed,) DANIEL O'CONNOR, J.P.,  
County of Carleton.

### No. 106.

I, CHARLES HENEY, of the Town of Bytown, in the County of Carleton, maketh Oath and saith; That in the Spring of the year, 1838, Mr. John Rochester built a house on the Broken Front of Lot Number thirty-nine, Clergy Reserve, Township of Nepean, That I was then in the employ of the said John Rochester, and occupied the said House so built, for a period of about three years, and paid him rent for the same; and further, that he built another house upon the same Broken Front, which was for a considerable period occupied by his son-in-

law, Malcolm McKinnon, and is now occupied by another person, under the said John Rochester; and furthermore, I know that upon my arrival in the Province in the year 1836, the said John Rochester was then in possession of the said Broken Front, and understood he was so, in possession, for several years before that period, under a purchase from Isaac Firth, and has had a continuous possession up to this period.

(Signed,) CHARLES HENEY.

Sworn before me, at Bytown, this 11th day of October, A.D., 1852.

(Signed,) DANIEL O'CONNOR, J.P.,  
County of Carleton.

### No. 107.

(Copy.)

GOVERNMENT HOUSE, YORK, 4th February, 1824.

My Dear Sir,—Sir P. Maitland has received a communication from Lord Dalhousie on the part of Mr. Firth, now occupying the Government Store at the Richmond Landing. If Mr. F. will forward to me a Petition for a Lease of the Clergy Reserve, (Lot No. 39) I will give immediate attention to it. In the meantime His Excellency allows Mr. F. to take possession of and occupy that Lot.

My Dear Sir, &c, &c., &c.

(Signed,) G. HILLIER.

Major BURKE, Richmond.

(Copy.)

GOVERNMENT HOUSE, YORK, 27th March, 1824.

Dear Sir,—The Patent officers here are laboring with all possible diligence to complete the deeds for all persons returned as entitled thereto, and I hope that long before the period of the General Election, all such will be in possession of their titles.

I shall be able to answer you finally about the Richmond Landing and adjoining Clergy Reserve, on hearing further from Head Quarters; it is by desire from thence that the step in Mr. Firth's favor has been taken here; should the Military Government finally resolve on not requiring the Lot, Firth may, I should think, have the Lot at once, or if otherwise perhaps a lease at a nominal rent might issue to the Deputy Quarter Master General who could grant Firth a license of occupation during pleasure.

Dear Sir, &c., &c.

(Signed,) G. HILLIER.

Major BURKE, Richmond.

### No. 108.

(Copy.)

STAMFORD, 9th April, 1824.

MY LORD,

Dear Lord Dalhousie.—On receipt of Your Lordship's letter of 21st January last, I directed that Mr. Sherwood should be written to in order to ascertain on

what terms he was willing to part with a proportion of his land in the Township of Nepean; in the meantime permission to occupy the Clergy Reserve adjoining the Landing was signified to Mr. Firth through Major Burke.

A lease of this reserve for 99 years at a nominal rent may be granted to the Commander of the Forces if your Lordship thinks it desirable, in which case Mr. Firth can become the sub-tenant either of the whole or of a part of it, upon such terms your Lordship may see fit. By this arrangement such part of it as may be hereafter required for public purposes will be permanently secured; the enclosed letter and diagram have been lately received from Mr. Sherwood. I confess I shall not be sorry if it be found unnecessary to conclude any negotiation with that gentleman, as his demand appears to me to be very exorbitant, especially as he declines to guarantee the title.

I remain, &c.,

(Signed,) P. MAITLAND.

His Excellency Lieutenant General,  
The EARL OF DALHOUSIE,  
&c. &c., &c.,

### No. 109.

COUNTY OF QUEBEC, }  
to wit: } HUGH HAMILTON, of the Township of Westmeath,  
in the County of Renfrew, in the Province of Canada,  
Lumber Merchant, maketh oath and saith; That he was present a few days ago, when a conversation took place between Mr. John Rochester and Hugh Carmichael, Agent for the House of Messrs. Gilmour & Co., and residing at the Mills of Messrs. Gilmour, relative to the Clergy Reserve Lot No. 39, in the Township of Nepean.

That he, this deponent, saith, that he heard Mr. Carmichael admit that the part he took in soliciting signatures in Bytown, to a petition or remonstrance against the sale; that he had no idea it was for the purpose of injuring Mr. Rochester, and that the document was drawn up by Mr. A. J. Russell, of the Crown Land Department, residing at Bytown.

(Signed,) HUGH HAMILTON.

Sworn before me, at Quebec, this 25th October, A.D., 1852.

(Signed,) DE SALES LA LEMARD, J.P.

### No. 110.

[*Petition of William Lyon Mackenzie, on behalf of the Estate of the late Robert Randall.—No copy kept, but second Petition, 12th November, gives his case fully.*]

**Mr. Commissioner Rolph to Mr. Mackenzie.**

CROWN LAND DEPARTMENT,

Quebec, 22nd October, 1852.

Sir,—I duly received your letter having reference to Lot 39, in Concession A, of Nepean, with enclosures.

The Claims set up to the Lot in question have long been under the consideration of the Government, and much conflicting action has been taken thereon at various times. The papers connected therewith are consequently voluminous.

The case having thus become of importance, I am desirous that it should be thoroughly investigated, and justice done upon its merits, and I have no objection to communicate any papers calculated to throw light upon the subject to any one interested.

The papers desired by you are now being copied, and will very shortly be handed to you.

I have the honor to be, Sir,  
Your most obedient humble Servant,

JOHN ROLPH.

W. L. MACKENZIE, Esquire, M.P.P.,  
&c. &c. &c., Quebec.

**Mr. Meredith to Mr. Mackenzie.**

SECRETARY'S OFFICE, QUEBEC, 2nd November, 1852.

Sir,—I have the honor to acknowledge the receipt of your letter, without date, and its accompanying Memorial, with reference to the Claim of the Estate of the late Robert Randall to Lot No. 39, Nepean, and broken front, and to inform you in reply that it has been transferred to the Commissioner of Crown Lands, through whose Department all matters connected with Public Lands are brought under the notice of His Excellency the Governor General.

I have the honor to be, Sir,  
Your obedient Servant,

E. A. MEREDITH, Assistant Secretary.

W. L. MACKENZIE, Esquire, M.P.P.,  
&c., &c., &c.

**Mr. Meredith to Mr. Mackenzie.**

SECRETARY'S OFFICE, QUEBEC, 11th November, 1852.

Sir,—I have the honor to acknowledge the receipt of your letter, of the 10th instant, requesting to be heard by Counsel before the Governor General in Council, in reference to the claim of the Devises of the late Robert Randall, to Lot 39, Front Concession of Nepean, and am to inform you, that your letter has been transferred to the Honorable Commissioner of Crown Lands, to whom all your previous communications upon the same subject have also been transmitted.

I have the honor to be, Sir,  
Your obedient Servant,

E. A. MEREDITH, Assistant Secretary.

W. L. MACKENZIE, Esq., M.P.P.

## No. III.

## Report on Messrs. Malloch and Rochester's Petitions, for Lot 39, Concession A, Nepean.

The Commissioner of Crown Lands has the honor to make a supplementary Report upon the documents submitted in the case of Rochester and Malloch, since the Report of 24th August last.

" On the 26th August, a Memorial was addressed on behalf of the claimants, to His Excellency, to which the signatures of some gentlemen from the Ottawa, then in Quebec, were procured, of which the following is an extract:—  
 " ' The undersigned do not affect to be ignorant of the most extraordinary and iniquitous expedients which have been resorted to, by those who attempted to instigate the Government to deprive him [Rochester] of his right of pre-emption.'

" The bold allegations of iniquity and injustice in this case, to rob the claimant of a just right, has formed a part of the measures of the Petitioners to push forward untenable pretensions. While on the one hand, no admissible evidence has ever been submitted to shew that such a right on the part of Rochester and Malloch exists, there is, on the other hand, among the documents, both evidence and Orders in Council negating any such claim.

" In Mr. Malloch's letter to the President of the Council, there is nothing new to be noted, as the facts have all been dealt with in the report of the 24th of August, except the inference drawn from the expression in the permission to Firth to occupy the Clergy Reserve 'adjoining the Richmond landing,' which is sought to be made to imply that the 'landing' was on the Clergy Reserve alluded to, which must therefore have been a front lot touching the water.

" The fact, however, is that the landing was on neither lot, but on lot No. 40, and the Clergy Reserve, 39, in the first concession, was as much 'adjoining the Richmond landing' as 39 in concession A, as may be seen by the sketches herewith submitted.

" That lot No. 39 in concession A, does not constitute a part of lot 39, in the first concession, is well known to Messrs. Rochester and Malloch, (though they base their claim on the contrary assertion,) and they have, in making a legal transaction between themselves, acknowledged the distinction; in evidence whereof a certified copy of a memorial of a sale [of 10½ acres in 39, concession A] by Rochester to Malloch, registered by them in the registry office at Bytown, on the 11th August last, is herewith submitted, wherein the position of the lots is described in a correct and legal manner, to which particular reference is requested.

" The allegations in Mr. Malloch's letter have been sufficiently noticed in the report already submitted, to which the Commissioner has nothing to add, but the unwilling expression of the fact that the alleged advantages were the result of obtrusive and precipitate conduct practised upon the Department in the absence of the Commissioner, in the course of an hour, in a way wholly inconsistent with its proper moral government. The lot thus pushed for is estimated at £5000 by the Bytown Magistrates. See their memorial.

" Special attention is requested to the Petition of the squatters upon lot 39, concession A, and the report thereon prepared in the ordinary course of Departmental business, prior to the time when Mr. Malloch acquired an interest in Rochester's claim.

" The Commissioner of Crown Lands has nothing further to state, in addition to his former report, touching the merits of the case, except to call attention to

"the memorials of the Town Council of Bytown, of the Magistrates of Bytown,  
"and of the Lumber Merchants, which have been since referred.

"Respectfully submitted.

"JOHN ROLPH.

"Crown Land Department,

"Quebec, 9th November, 1852."

## No. 112.

(Copy.)

A Memorial to be registered of an Indenture of Bargain and Sale, tripartite, made the eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-two, in pursuance of the Act to facilitate the conveyance of real property, between John Rochester, senior, of the Town of Bytown, in the County of Carleton, in the Province of Canada, Yeoman, of the first part; Barbara Rochester of the same place, wife of the said party of the first part, of the second part; and Edward Malloch, of the Town of Bytown, in the County of Carleton, in the said Province, Esquire, of the third part; whereby the said party of the first part, in consideration of the sum of five shillings of lawful money of the Province of Canada, paid by the said party of the third part, to the said party of the first part; the receipt whereof is acknowledged, did grant unto the said party of the third part, his heirs and assigns for ever, all and singular, that certain parcel or tract of land, and premises situated, lying, and being in the Township of Nepean, in the County of Carleton, in the said Province, containing by admeasurement, ten and a half acres, be the same more or less, being composed of the west part of Lot 39, in Concession A, fronting on the Ottawa or Grand River, which said piece or parcel of land is described as follows: that is to say, commencing at the water's edge of the River Ottawa, in the limit between Lot No. 38 and 39; then South sixteen degrees East, ten chains seventy links more or less, to the allowance for road in rear of said Concession, and in front of the first Concession; then North sixty-six degrees thirty minutes East, along the Concession line, eight chains eighty-two links; then North sixteen degrees West, twelve chains seventy links more or less, to the water's edge of the River Ottawa aforesaid; then Southwesterly along the same to the place of beginning. To have and to hold unto the said party of the third part, his heirs and assigns, to, and for his, and their sole and only use for ever; and by the same Indenture it is witnessed, that the said party of the second part, the wife of the said party of the first part, hath thereby barred her dower on the said land; which said Indenture is witnessed by John Rochester of the Town of Bytown, Junior, Yeoman, and James Rochester of the same place, Yeoman, and this Memorial thereof is hereby required to be registered by me, the said grantor therein named.

Witness my hand and Seal, the Eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-two.

(Signed,) JOHN ROCHESTER, [L.S.]

Signed and Sealed in presence of

(Signed,) JOHN ROCHESTER,  
" JAMES ROCHESTER.

### COUNTY OF CARLETON REGISTRY OFFICE.

I do hereby certify that the foregoing is a true and faithful copy of Memorial number five thousand eight hundred and sixty-nine, recorded in this office, at the

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hour of ten o'clock forenoon, of Wednesday the Eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-two, in Book G, page 194.

(Signed,) JAMES H. BURKE, Dy. R.,  
County of Carleton.

COPY OF AFFIDAVIT.

COUNTY OF CARLETON, } JOHN ROCHESTER, Junior, of Bytown, in the  
to wit: said County, Yeoman, in the within Memorial named,  
maketh Oath, and saith; That he was present, and did see the indenture to which  
the said Memorial relates, duly signed, executed, sealed, and delivered by the said  
named John Rochester, and Barbara Rochester, his wife, the Grantors, and also by  
Edward Malloch the Grantee, and that he is a subscribing witness to the execution  
of the said Indenture; and that he, this Deponent, also saw the said Memorial duly  
signed and sealed by the therein named John Rochester, Senior, for Registry  
thereof, which said Memorial was attested by him, this Deponent, and another  
subscribing witness, and that both said instruments were executed.

(Signed,) JOHN ROCHESTER, Junr.

Sworn before me at Bytown, in the said County, this Eleventh day of August, 1852.

(Signed,) J. B. MONK,  
A Commissioner in B. R.

No. 113.

Mr. Commissioner Rolph's Report on W. L. Mackenzie's Petition, for  
39, Concession A, Nepean.

REPORT on Petition of the Executor of the Estate of ROBERT RANDALL, for Lot  
39, Concession A, of Nepean.

"REPORT.

"The Commissioner of Crown Lands has the honor to Report, for the informa-  
tion of His Excellency the Governor General, in Council, upon the Memorial of  
"W. L. Mackenzie, Esquire, M.P., as Executor to the estate of the late Robert  
"Randall, and accompanying documents.

"The right of pre-emption is claimed, on behalf of Randall's Estate, to Lot 39 in  
"Concession A, of the township of Nepean, Ottawa Front, and within the Town  
"of Bytown, which was leased to the said Randall in 1809, and which is now  
"under claim by Messrs. Rochester and Malloch, before the Executive Council.

"The claim put forward further includes 39 in the first Concession (which had  
"also been leased to him) but which has heretofore been sold to Rochester.

"From the document submitted with the Memorial, and from other information  
"in the Department, filed in Rochester's case, it appears that Mr. Randall's lease  
"was (before its expiration) declared forfeited for non-payment of £11 13s. 10d.  
"of rent.

"This was a rigorous course, very seldom indeed, if ever, resorted to, and the  
"reason assigned for it in the official documents submitted, and in possession of  
"the Government, is,—that the land was "required for public purposes."\*

\* Term of Lease from 1809 to 1830. Declared forfeited 1821.

" Mr. Randall appears to have submitted numerous petitions to be allowed to pay the back rent, and have the lease renewed, both before and after the term to which his first lease extended, which, however, uniformly met with a refusal, on the same ground, up to the date of his last petition, in 1833, viz. : that the land was required for public purposes.

" There is, however, a letter from Mr. Secretary Mudge, to Mr. Randall, of 6th of February, 1830, which so far promises him a renewal of the Lease as to state, by direction of the Governor, † that if it should not be required for public purposes, " His Excellency thinks that there will be no objection to your Lease being renewed for the usual term."

" It appears that Mr. Firth, who was then occupying an old Government building on the " Richmond Landing " Lot (No. 40), where he then, or afterwards kept a Tavern,—as indicated on the accompanying sketch, No. 1,—obtained permission about the year 1823 (being immediately after Randall's Lease had been cancelled, but before the term of it would otherwise have expired) to occupy without Lease, 39 in the first Concession, but was uniformly refused a Lease on the same grounds, viz. : the requirements of the public service.

" Mr. Firth, under his permission to occupy, afterwards disposed of his interest in Lot 39, in the first concession to Mr. Rochester, and took upon himself also to include Concession A, to which he, for the first time, made any pretension. Mr. Rochester having improved Lot 39 in the first Concession, was finally allowed to purchase so much of it as was not required for the public purposes: But any claim to Lot 39 in Concession A, now under consideration, was at that time denied by the Government.

" It may be necessary here to remark, that the documents now submitted in support of the claim of Randall's Estate, indicate that the permission given to Firth to occupy the Government Building at the Richmond Landing (on Lot No. 40) was separate and distinct from the permission to occupy 39 in the first Concession. The position of the various points adverted to in the correspondence, and the separate Lots, are exhibited in the accompanying sketch, No. 1, being a copy of a plan by one of the Ordnance Officers at Bytown. Any reference, therefore, to contiguity to the Richmond Landing can have no bearing on Lot 39, Concession A.

" It appears, indeed, by a Departmental Report by Mr. Bouthillier, that it was recommended that Rochester should be allowed to purchase 39 in the first Concession, but that 39 in Concession A, should be sold at Public Auction. Contrary to this recommendation, an Order in Council was passed, 17th February, 1846, allowing him to purchase both Lots. But this Order in Council was rescinded by another Order in Council on the 20th June, 1846,—and both Lots were ordered for sale at Public Auction, which Order in Council was communicated to Mr. Rochester, who petitioned against it; which was followed by another Order in Council of first July, 1846, which ordered 39 in the first Concession to be sold to Rochester at the valuation of the District Agent, but ordering Lot 39 in Concession A to be sold at Auction,—thereby disclaiming any claim of Rochester to Lot 39, Concession A.

" Upon a further appeal from Rochester, he, by Order in Council of 25th September, 1846, was allowed to purchase at the valuation of the Town Lots into which it had, in the interim, been surveyed. The following is an extract from the Order in Council last mentioned:—" In giving this advice, the Committee deny any claim of right on the part of Mr. Rochester."

" Mr. Rochester did not choose to avail himself of this Order in Council, and on the 8th December, 1847,—more than a year afterwards,—another Order in

† Major-General Sir John Colborne, now Lord Seaton.

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" Council was passed, ordering the Town Lots to be advertised and sold at Auction ;—which is another and stronger disclaimer of Mr. Rochester's claim.

" Against this Order in Council Mr. Rochester again appealed, and by another Order in Council he was permitted to purchase according to the terms of the Order in Council of 25th September, 1846, viz. :—at the valuation of the Town Lots, provided he availed himself of the terms offered before the 1st of May, 1848.

" From that time he has not availed himself of the above terms.

" On the 23rd July, 1852, Mr. Rochester again petitioned to get the Lot at 40s. per acre, or other reasonable price. Upon this the Commissioner of Crown Lands gave a brief summary of the case, tending to show the absence of any claim on the part of the petitioner, and referring to the document containing the history of the past Departmental and Executive action, but offered no particular recommendation. Upon this, an Order in Council, 5th August, 1852, was passed, allowing him to purchase the Lot at 50s. per acre, with interest from 1848, —which seems, however, an error in date.

" If purchase was permitted on the ground he sets forth, rent would accrue from 1823, as it did on his purchase of Lot 39 in the first Concession; but the Bytown Magistrates estimate the value at £5,000.

" The Order in Council of 5th August, 1852, has reached this Department, but has never been communicated to Mr. Rochester, and if its contents have become known to him, it must have been in some unofficial way.

" Mr. Rochester, by the hands of Mr. Malloch, deposited with the Accountant the sum of £92 12s. 6d. on the purchase money,—the real value, according to the Bytown Magistrates, and by reputation, being £5,000. The description was commenced, but was stayed, and the amount is still subject to Mr. Rochester's order.

" It is a frequent occurrence in this Department that matters are stayed under these circumstances. An incidental knowledge of such an Order in Council, and a payment to the Accountant in anticipation of a Deed, cannot, and in this Department never has been, regarded as constituting a claim, when further deliberation and information have indicated sufficient grounds for a contrary decision : (in the case of Campbell and Armstrong, in which the claim of the former to purchase by Order in Council, was recently reversed in favor of the latter.)

" In the present instance, the matter was urged on with undue haste, at a moment when the Commissioner was fully occupied with other matters of an important nature, and it was only when it was nearly consummated that [a word left out] no sufficient reservation had been made for public purposes of an indispensable character. He, therefore, felt it incumbent upon him to stay further action until the Report of the Commissioners of Public Works, on the reservations necessary to be made for public purposes, could be obtained.

" The Report now received from the Department of Public Works states, that with a view to probable public improvements, "it is of the utmost importance that no grant should at present be made." This is further corroborated by the general testimony afforded to the Department, in evidence whereof a letter is herewith submitted from D. McLachlin, Esquire, Member of Parliament for the Town of Bytown, and one from Robert Bell, one of the ablest Surveyors in the Province, and a resident upon the adjoining Lot. Herewith, also, is a Memorandum from Mr. Surveyor Russell, shewing the extent and importance of the navigation on the Ottawa, which a few small links of Canal would open up—one of the smallest but most important of which would cross this Lot.

" It is evident that a sufficient reservation of at least three chains round the Bay, for rafts entering the Government Slides, absolutely cannot for a moment be dispensed with ; and if there be a present, or even a comparatively remote pro-

" bability of a Canal passing through the Lot, the expediency of which is so forcibly maintained, it would be a short-sighted policy that would deprive the public of the means now at the disposal of the Government for effecting it.

" Under the foregoing circumstances, the Commissioner of Crown Lands felt it to be his duty to recommend that all preceding Orders in Council should be rescinded, and the Lot reserved for public purposes.

" The recommendation to rescind the preceding Orders in Council is fully borne out by the rescinding of several of the Orders in Council in this case, even after they had been published and acted on—some of which orders, indeed, were rescinded at his [Rochester] own request after publication, though affecting the interests of others who had expressed a wish to purchase under them.

" It is proper further to observe, that the Squatters on Lot No. 39, Concession A, (who as resident Squatters for a number of years, present a claim stronger than Mr. Rochester, who lives on an adjoining Lot,) have petitioned to be allowed to purchase at public sale the Town Lots which they have improved and settled upon for some years.

" The above details admit of a contrast of the relative claims of Rochester and the Executor of Randall.

" Rochester derived no claim through Firth, who never had even liberty to occupy, or ever did occupy, Lot 29, Concession A; nor has Rochester put forward any claim before the Government which has prevailed, or which has not lapsed at his own choice.

" Randall was the original Lessee of the Crown, not only of Lot 39 in the first Concession, but also of Lot 39 in Concession A; and although under the rigorous application of the Law, his Lease was not renewed, on several applications from him, on the ground of the Lot being required for Public Service, yet he shews a letter of the 6th February, 1830, (this is the period to which his Lease originally extended,) from Secretary Mudge, stating, that if it should not be required for public purposes, " His Excellency thinks that there will be no objection to your Lease being renewed for the usual term."

" On the part, therefore, of Randall, it may be observed that up to a recent time the Lot in question has been considered as in whole, or in part, necessary to be reserved for public purposes, and is now wholly so by the accompanying Report from the Department of Public Works; and as he [Randall] has never been informed of any intention of the Government to give it up as a public reservation, he, or his Executor, has had no opportunity afforded of hitherto availing himself of his claim through Secretary Mudge's letter.

" It is, therefore, submitted to the consideration of the Council, whether, if the Lot, or any part thereof, should be, at any time, alienated from its purpose as a public Reservation, the Executor of Randall has not a claim deserving of consideration.

" Respectfully submitted,

" JOHN ROLPH.

" CROWN LAND DEPARTMENT,

" Quebec, 9th November, 1852."

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## No. 114.

To His Excellency, &amp;c.....IN COUNCIL.

The humble Petition of the undersigned Household<sup>ers</sup>, in the Town of Bytown;  
 MOST RESPECTFULLY SHEWETH:

That your Petitioners have been for some years resident on portions of Lot No. 39, Concession A, on the Ottawa Front, Township of Nepean, in the County of Carleton, now surveyed into Town Lots, with a view of becoming purchasers of such portions when the Government might be pleased to bring the said Lots into market.

That your Petitioners have made small improvements on these Lots, but having no tenure but occupancy, or such right as the Government might be pleased to recognize as pre-emptive, they felt no encouragement to improve or erect tenements, as the extent of their means is in accordance with the necessities of their Petition.

That your Petitioners earnestly beg that it may please Your Excellency to grant Orders in Council for the sale of the Surveyed Lots contained in Lot No. 39, Concession A, Ottawa Front, Township of Nepean, whereby, as purchasers, they may obtain titles, to enable them to extend their improvements and acquire the right of Citizens in the management of Municipal and Provincial interests.

And your Petitioners, as in duty bound, will ever pray.

(Signed,)

<sup>his</sup>  
 DENIS ✕ DERSEY,  
<sup>mark.</sup>

<sup>his</sup>  
 TIMOTHY ✕ MURPHY,  
<sup>mark.</sup>

CON DEMPSEY,

<sup>his</sup>  
 CORNELIUS ✕ CROWNEN,  
<sup>mark.</sup>

<sup>his</sup>  
 RICHARD ✕ PHILIPS,  
<sup>mark.</sup>

<sup>her</sup>  
 WIDOW ✕ HICKEY,  
<sup>mark.</sup>

<sup>his</sup>  
 EDWARD ✕ ALLEN,  
<sup>mark.</sup>

<sup>his</sup>  
 RICHARD ✕ CLEARY,  
<sup>mark.</sup>

<sup>his</sup>  
 MARTIN ✕ BOTHWELL,  
<sup>mark.</sup>

(Signed,)

<sup>his</sup>  
 PATRICK ✕ MALONE,  
<sup>mark.</sup>

<sup>his</sup>  
 MICHAEL ✕ KELLY,  
<sup>mark.</sup>

<sup>his</sup>  
 MICHAEL ✕ HORLY,  
<sup>mark.</sup>

<sup>his</sup>  
 PATRICK ✕ TOWEY,  
<sup>mark.</sup>

<sup>his</sup>  
 MICHAEL ✕ COSENS,  
<sup>mark.</sup>

<sup>his</sup>  
 EDWARD ✕ CORGAN,  
<sup>mark.</sup>

<sup>his</sup>  
 JOHN ✕ PURSEL,  
<sup>mark.</sup>

<sup>his</sup>  
 JAMES ✕ MALONE,  
<sup>mark.</sup>

<sup>his</sup>  
 JOHN ✕ DORAN,  
<sup>mark.</sup>

Subdivision, No. 39, Ottawa Front, Nepean.

The Lots to which reference is made in this Petition, are those claimed by Mr.

John Rochester, and who has on several occasions brought the subject under the consideration of the Government.

Since the Order in Council, of the 14th February, 1848, on it being made apparent that Mr. Nicholas Sparks' claim could cover only a few of the Lots, the Agent of the Department was instructed to offer to Mr. Rochester the remainder of them upon the terms required by the Order in Council of the 28th of January, 1848, to whose reply to Mr. Durie reference is requested.—[18th February, 1848.—22nd June, 1846.—1st July, 1846.—25th September, 1846.—28th January, 1848.—14th February, 1848.—11th March, 1850.]

Mr. Rochester again addressed the Department on the 16th February last, and in replying to his letter I called upon him to state distinctly whether or not he intended to avail himself of the permission to purchase, (allowed him in September, 1846, and January, 1848,) otherwise notice would be given that the Lots were open for sale to any one desirous of purchasing. To this letter a reply has not yet been received.—[28th June, 1850.—21st February, 1852.]

Under these circumstances, and it may be observed that Rochester's right to the land has always been questioned, it is recommended that the prayer of this Petition be granted, by notice being given that the Lots (with the exception of those claimed by Mr. Sparks) are open for sale at the prices approved by the Order in Council of 8th December, 1847.

(Signed,) JOHN ROLPH.

CROWN LAND DEPARTMENT,  
Quebec, — June, 1852.

Since the above Report was made, the Commissioner has had reliable information that some of the numerous Squatters upon the Town Lots on Lot 39, Concession A, of Nepean, are very good industrious people, with considerable improvements, and with tenements as comfortable as the circumstances would permit.

(Signed,) JOHN ROLPH.

9th November, 1852.

## No. 115.

Petition of W. L. Mackenzie, relative to Lot 39, Concession A, Nepean.

QUEBEC, November 12, 1852.

To His Excellency the Earl of Elgin and Kincardine, Governor General of Canada, &c. &c. &c.

IN COUNCIL :

The humble Petition of WILLIAM LYON MACKENZIE, Acting Executor to the Estate of the late ROBERT RANDALL, of Chippewa,

SHEWETH :

That since your Petitioner's last appeal to the justice and equity of Your Excellency, in the matter of Mr. Randall's Reserve, Lot 39, 1st Concession, Nepean, in the Ottawa, and Lot 39, Concession A, in said Township, he has been permitted to see certain papers, from which he has ascertained :—

1st. That Firth never petitioned for leave to occupy the broken Lot, Concession A, numbered 39, (also a Clergy Reserve,) but only for a License of occupation of

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39, in first Concession, which Mr. Rochester has obtained since by purchase from Government.

2nd. That Government require—or may require—certain parts of the broken Lot 39, for Provincial uses.

3rd. That since Randall leased the broken Lot in 1809, there has been no adverse possession in any person; Firth never applied for it; Randall was in possession of the broken Front; was never actually ejected therefrom; was assured by Lieutenant Governor Colborne, that if not wanted for public uses he (Randall) might have it, paying arrears of rent as per conditions of his Lease; and that his (Randall's) name remains to this day on the Dooms-Day Book of the Government, as the Lessee and occupant of said broken Front.

4th. That there are no adverse applicants for the broken Front, save Messrs. Malloch and Rochester; and that Rochester's first application was only made in 1844.

5th. That though Firth only asked of Government a License to occupy 39, in the first Concession, he pretended to sell the right he had, whatever it was, in that Lot, to Rochester, including broken Lot 39, Concession A, in the sale, although to it he never had any right at all.

Your Petitioner most respectfully submits to Your Excellency:—

1st. That it was a hard and unusual act to cancel Randall's Lease of 39, in 1st Concession, and 39, in Concession A.

2nd. That Lord Seaton was willing that Randall should pay arrears of rent and keep possession of both Lots, if Government did not require them for public uses.

3rd. That before the question as to their being required for public uses was decided, the grave closed upon Randall.

4th. That no one but Randall has been either Lessee or occupant of broken Lot 39, Concession A.

5th. That Randall had a promise of a License to occupy certain valuable property on the Niagara River, if he established a Forge and manufactured malleable iron; that he did so, but the Government pledge was never fulfilled.—(3 of page 3, appended Petition).

6th. That Randall built the first Mills in Upper Canada, where flour was manufactured for the European market.—(13 of page 27, appended Petition).

7th. That the Legislative Assembly of Upper Canada admit that the Law Courts and Government did injustice to Randall in his life time.

(See 1 of page 1, of appended Petition.)

(See 2 of page 2, of do do )

(See 9 of page 19, of do do )

8th. That Mr. Justice Willis represented to Government, in England, the injustice thus done to Randall.

(See page 21, of appended Petition, where marked 10.)

9th. That after Mr. Randall had been cruelly detained seven years in prison for alleged debt, his creditor, while selling his property, made the acknowledgment in Court, that he (Randall) had an interest in property detained from him by that creditor.

(See appended Petition, page 25, where numbered 12.—See also Report of Trial—Messrs. Rolph and Baldwin for Defendant.)

10th. That the Governor in Chief, Lord Dalhousie, fully satisfied of the injustice done to Randall, vainly endeavored to aid him in the recovery of his rights.

(See appended Petition, page 23, where numbered 11; and pages 20 and 21, where numbered 9a and 9b.)

11th. That Messrs. Beardsley, Rolph, Robinson, Bidwell, and Mathews fully investigated the charge of injustice done Randall, in 1828; and after examining all the parties, reported as in the annexed Petition.

(See printed Petition, page 7, number —; also, pages 8, 9, 10, 11, 12.)

12th. That said Committee reported the Bill for Randall's relief, a copy of which is printed in page 14, of appended Petition; and that that Bill passed the Assembly.

13th. That another Assembly passed the Bill, numbered 6, in page 15 of appended Documents, by a vote (page 16) of 31 to 2.

14th. That a third Assembly appointed a Committee who reported as in page 17, of the appended Petition, where marked 7, unanimously, Mr. Thorburn being Chairman, but the Bill to give Randall's Devises (for he had died) a remedy, was lost in the Legislative Council.

15th. That the small remnant of the once extensive possessions of a deeply injured man, which are yet in the hands of Government, can now be restored to his legatees without injustice to any one; and your Petitioner humbly submits that, if the facts are as stated, they ought to be so restored, with the least possible delay, save and except such part as the authorities may reserve for public uses.

16th. That a few months before his decease, namely, in 1833, Robert Randall petitioned for the last time that his Lease of the broken Lot, say 39, Concession A, with Lot 39, should be renewed, and that no other reason was alleged for not complying with his request than that it was "indispensably necessary to the public service." Your Petitioner seeks no part which the public may require, only the residue.

17th. That Messrs. Firth and Berrie were Robert Randall's tenants on Lot 40, until, when driven off by Sherwood and LeBreton, they prayed, first, for an acre of Lot 39, by License of occupation—then for a part of 39; but never for any part of the broken Lot in front of 39. For it Randall was the first Lessee, the only Lessee—the first applicant—the only occupant, and under all the circumstances, entitled to the right of pre-emption in equity and fair dealing.

18th. That by the Documents received by your Petitioner from Isaac Firth, last October was a year, and which have been sent to the Crown Lands Office, it is evident that he did not petition—or intend to petition—for the broken Lot 39, Concession A, but only for 39, the whole Lot, in 1st Concession.

19th. That by Isaac Firth's affidavit of the 13th July, 1846, it appears that he fell into the error of considering 39, in Concession A, as belonging to 39, in 1st Concession, whereas, in fact, the Lots were distinct and separate.

20th. That it is evident from the Minute in Council of June 22, 1846, the Order in Council, 25th September, 1846, and the subsequent Advertisement of Sale, dated January 4, 1848, that the Government of that day considered that Mr. John Rochester had no claim whatever to broken Lot 39, Concession A, in Nepean. The Government in their Order in Council, September 25, 1846, remarks that:—"With respect to the broken Front, it does not appear that Firth ever made any application for it; and this portion of ground is not ever mentioned in any of the papers or correspondence until he assigns his interest to John Rochester, where the broken Front is mentioned for the first time."

A charge is made in Rochester's Petition of February 8, 1848, against "the Inspector of Clergy Reserves," namely:—that he attempted fraudulently to possess himself of said 39, Concession A; and reference to another Inspector is made for proof of the said: this feature in the case Your Petitioner is unable clearly to understand. Messrs. Egan and Aumond value the Lot at 40s.—certain Government Officers at 50s.—and Mr. Perkins at £15 per acre.

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21st. That perceiving in a statement by Messrs. John Egan, Joseph Aumond, Honorable T. McKay, William Stewart, &c., a charge that "iniquitous expedients" have been resorted to, to induce the Government to act unjustly toward Messrs. Malloch and Rochester, who themselves complain (13th August, 1852,) of "some hellish back stairs influence," your Petitioner declares that he has merely done his duty to his deceased friend, through the Official representations made on behalf of the legatees named in his Will, and thus confidently leaves the matter in the hands of Your Excellency.

May it therefore please Your Excellency to inquire into the Claim of the said Robert Randall, to a pre-emption of said Lot 39, Concession A, except so much thereof as may be required for the public service; and to grant the residue of the Lot to the Petitioner, in trust, for the Devisees of the said Randall, and to their use, to be disposed of as the rest of his real estate is ordered to be disposed of under his Will; or to adopt such other course in the premises as to Your Excellency in Council shall seem good for their relief.

And Your Petitioner, as in duty bound, will ever pray.

(Signed,) W. L. MACKENZIE,  
Acting Executor to the Estate of the  
late Robert Randall, Esquire.

## No. 116.

[*Nothing appears under this number in the manuscript.*]

EXTRACT from a Letter—Hon. Malcolm Cameron, President Committees of Executive Council, to W. L. Mackenzie, dated "Quebec, Decr., 16, 1852.

"The Lot 39 is finally disposed of, and deeded to Rochester, under a clear title, fixed by Imperial Statute, as the occupant when the Lot was examined under the Act.

"There was no recognition of Randall's claim at that time. He was deeply wronged, but the Act was legal, and they had the power."

SECRETARY'S OFFICE, QUEBEC, 31st December, 1852.

Sir,—I have the honor to state, in reply to your letter of the 24th instant, received this morning, that it is not in my power to give you the information you require relative to your Petition on the subject of the Broken Lot 39, in the Concession A, Nepean, Ottawa Front.

These Petitions were, as you are aware, at once transferred by me to the Honorable Commissioner of Crown Lands.

I must, therefore, request you to refer to that officer for any information you may desire in relation to them.

I have transmitted to him your communication of the 24th instant.

I have the honor to be, Sir,  
Your obedient Servant,

A. N. MORIN, Secretary.

W. L. MACKENZIE, Esquire, M.P.,  
Toronto, U.C.

(Copy.)

## CROWN LAND DEPARTMENT,

Quebec, 10th January, 1852.

Sir,—In reply to your letters, inquiring what action has been taken by the Government with reference to No. 39 in Concession A, Nepean, I have the honor to inform you, that it was decided, by Order in Council of the 24th of November, to grant a Patent to Mr. Rochester or his assignee, containing a reservation of that part of the lot required for public purposes, and a reservation of one chain and a half in width from high water mark along the whole front of the lot; but the issue of the Patent has since been suspended, by Order in Council, of the 20th ultimo, with view of ascertaining if he will accept of it on the further understanding that he shall have no claim upon the Government, in the event of its being hereafter decided that any of the tracts as laid down in a survey (dividing the land into Town Lots) made in 1846, are vested in the Corporation of Bytown.

I have the honor to be, &amp;c.

(Signed,)

JOHN ROLPH.

WM. L. MACKENZIE, Esq., M.P.P.,  
Toronto.

## No. 117.

Mr. Commissioner Rolph's Report upon hearing the Randall  
Case by Counsel.

## REPORT.

The Commissioner of Crown Lands has the honor to Report upon the application of W. L. Mackenzie, Esquire, M.P., to be heard by Counsel before His Excellency the Governor General in Council, upon the Claim of the Estate of the late Robert Randall to Lot 39, in Concession A, of Nepean.

Mr. Mackenzie's letter, with reference, was received in this Department on Saturday, the 13th instant, and as the request contained therein peculiarly affects the privileges of the Executive Council, it is with great diffidence the Commissioner would offer any opinion upon the subject.

As, however, the reference of the application to him would seem to call for an opinion, the Commissioner would respectfully suggest the propriety of hearing Mr. Mackenzie.

Respectfully submitted.

JOHN ROLPH.

CROWN LAND DEPARTMENT,  
Quebec, 15th November, 1852.

Further Petition for delay just received, and also submitted herewith. Referred to a Committee of the Executive Council, 15th November, 1852.

(Vide Report, 24th November, 1852.)

## No. 118.

EXTRACT from a Report of a Committee of the Honorable the Executive Council on Land Applications, dated 24th November, 1852, approved by His Excellency the Governor General in Council on the same day.

The Committee of Council have had under consideration the Reports of the Commissioner of Crown Lands of the 24th August, and 9th November, 1852, on the Petitions of John Rochester, and Edward Malloch, Esquire, and also his report of the latter date on the Petition of William Lyon Mackenzie, Esq., M.P.P., Executor to the Estate of the late Robert Randall, and also a further Petition of the said William Lyon Mackenzie, of the 12th instant, with accompanying documents with reference to Lot No. 39, in Concession A, of the Township of Nepean, Ottawa Front.

The Committee having again given their serious attention to the facts and circumstances connected with the above claims as set forth in the Reports of the Commissioner of Crown Lands, and the Petitions above referred to, do not see sufficient reasons to induce them to depart from their recommendation which was approved in Council on the 7th August, 1852, except, however, in so far as relates to the reservation of one chain and a half in width from high water mark, which they recommend should be retained along the whole front of the lot, and to that part of the lot reserved by the Department of Public Works for public purposes, with which reservations, they humbly advise that a Patent issue to Mr. Rochester, or his Assignee for the lot in question.

Certified.

WM. H. LEE, Assist. C.E.C.

## No. 119.

Second Memorial of the City of Bytown, 6th December, 1852.

To His Excellency the Right Honorable James Earl of Elgin and Kincardine, K.T., Governor General of British North America, &c., &c., &c.

IN COUNCIL.

The Memorial of the Town Council of the Town of Bytown;

HUMBLY SHEWETH:

That your Memorialists learn with surprise that an application from certain parties to obtain Clergy Reserve Lot No. 39, in Concession A, on the Ottawa River, in the Township of Nepean, which said Lot is within the limits of Bytown, is being entertained.

That in view of the results of former applications from the same source, and the refusal of Government to entertain the matter, it was not supposed possible that there could be any danger of their succeeding in it, and therefore the indifference in relation to it heretofore manifested by the population here.

That the said Lot was surveyed by order of the Government in 1846 into City Lots, and Streets regularly laid out and marked by stone boundaries, and the Lots upon these Streets were advertised for sale in the "Canada Gazette [see Official Gazette 8th January, 1847] after the claim or pretended claim now set up had been refused; that the survey of the Streets so laid out in 1846 was the original survey of that part of the Town of Bytown made under the authority of the Government,

and that the said Streets are lawfully established highways under the Statute 10 & 11 Vic. cap. 43, by which the Town of Bytown, including that said Lot, was incorporated, and by the Statutes 50 Geo. III, cap. 1st, sec. 12, and 13 Victoria, cap. 35, sec. 33, and 13 and 14 Victoria, cap. 15, sec. 1st, and by other Statutes of this Province.

That it does not appear from the facts of the case, which in Bytown are known from personal observation and public notoriety, that a right such as that set up can exist either by pre-emption or otherwise; and your Memorialists cannot be deceived as to the fact that the Lot has not been occupied or improved or in any way increased in value by the parties now claiming a right to it, neither is there any visible thing that could be construed to constitute a claim in that behalf of any kind whatever.

That it is matter of public notoriety that the said property, which is now worth not less than five thousand pounds, is being parcelled out amongst those exerting themselves to obtain it for the nominal claimant, one person having already registered a Deed conveying ten and a half acres of the most valuable part of it in fee simple for the consideration of five shillings, a certified copy of the memorial of which deed is herewith transmitted.

That while your Memorialists regard vested rights as being peculiarly sacred and entitled to be held inviolate, they believe that unless there is evidence of the existence of a right, it should not be presumed to exist on the representation of interested parties: And it is notorious that in relation to this case a Petition on behalf of the claimant in question has been signed by parties not belonging to the place or neighbourhood, who could not have had a knowledge of the facts otherwise than through those who solicited their signatures.

That the sale of the said lot at a trifling price to an individual having no just right to it would be a grievous public wrong that could not be sustained on any proper principles, and could not fail to produce disagreeable consequences.

That to your Memorialists it appears absurd to suppose that any individual can have a right such as that set up in this case as it was not by the labor, the cost, or the enterprise of any one in particular that the said Lot became valuable; but by the collective energies, the collective costs, and the collective enterprise of the citizens of Bytown.

And your Memorialists further beg to represent that in that part of Bytown there are not, excepting Streets, any grounds reserved for public purposes, though there is especial necessity for such reserves, that being the only place where the River can be easily approached, where Lumber can be landed, or where water can be conveniently obtained from the Ottawa River: And they, therefore, humbly pray, on behalf of the people of Bytown, who alone possess a pre-emptive right on the said Lot,—that the Town Council of the Town of Bytown may be allowed to purchase that portion lying north of Ottawa Street, extending from Ottawa Street to Oregon Street, and between Broad Street and Water Street, containing (exclusive of Streets) about nine and a quarter acres, at Five Pounds per acre, for public purposes.

And your Memorialists, as in duty bound, will ever pray.

(Signed,)

R. W. SCOTT, Mayor.

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## No. 120.

### Report of the Commissioner of Crown Lands on said Memorial.

#### REPORT.

The Commissioner of Crown Lands has the honor to report, for the information of His Excellency the Governor General, in Council, on the second memorial of the Town Council of Bytown, dated the 6th December, 1852, in reference to the Town Lots within the limits thereof, on Clergy Lot 39, Concession A, of Nepean.

The Commissioner has the honor to call the attention of His Excellency, in Council, to the history of this piece of ground, as detailed in the reports of this Department, and the Orders in Council passed thereon, of 17th February, 20th June, 1st July, and 25th Sept. 1846, 8th Dec. 1847, and 28th Feby. 1848, forming a consecutive course of action on the part of a former administration, disclaiming the pretensions of Mr. Rochester; and to the report of this Department of the 4th, and Order in Council thereon of 7th August; the report of 24th August; the report of 9th Nov., on Rochester's, and of the same date on Mackenzie's claims, and the Order in Council thereon of 24th Nov., on which no patent has yet issued; draft of patent prepared in this Department, in conformity to the Order in Council, having been referred to the Honorable Attorney General West (Mr. Richards), on — Nov., for his opinion, inasmuch as the Commissioner doubted its legality: also, to the report of June, 1852, on the petition of the squatters, referred to Council on 9th Nov., conjointly with the reports on the Randall, and on the Rochester and Malloch claims; but although the latter claims are the subject of the Order in Council of the 24th November, yet no consideration appears of the former or squatters' claims.

On the said claim of the squatters, as it has not yet been disposed of, the Commissioner would further suggest, that, as the Town Lots were advertised for sale, "upon application to the resident agent, on and after" a given day, at stated prices, there may be a question of law to decide, viz.: whether on the occupation of the lots and tender of the price, in virtue of such advertisement, a legal right to purchase may not have accrued in respect to such lots as have been for some years past so occupied, or whether the claims of the occupants will not be such as to entitle them to indemnity.

The Memorial now submitted correctly states the circumstances, and hence a question arises, whether any sale under the Order in Council of 24th Nov., which would include the streets and highways, which appear to be legally vested in the Corporation, would be valid: the case, indeed, seems stronger than an ordinary one, inasmuch as Lot 39, in Concession A, of Nepean, did not previously constitute a part of Bytown, but was expressly incorporated in it by Act of Parliament, immediately after the survey: that being the only alteration made in the former limits.

It is true, as stated in the memorial, that there has been no public reservation, nor is there any public property belonging to the town of Bytown, except streets and highways, near that end of the town: the reservations made for squares, market, &c., on lot letter O, (which are the only reservations for such purposes ever conferred by the Provincial Government upon the town of Bytown), being more than a mile and a half distant, and situated comparatively in a swamp.

On the general substance of the memorial, the Commissioner feels that it is unnecessary for him to comment, as its statements so strongly corroborate what he has already reported.

The very moderate prayer of the memorial—no patent having yet issued upon the Order in Council of 24th Nov. ultimo—the Commissioner has the honor re-

spectfully to submit for the consideration of His Excellency, in Council, and awaits further instructions from the Government.

JOHN ROLPH.

Crown Land Department,  
Quebec, 15th December, 1852.

Endorsed, "Referred to the Attorney General."

M. C.  
P.E.C.

### No. 121.

Copy of Order in Council, 13-14 December, 1852.

On the letter of the Attorney General for Upper Canada, dated 13th instant, stating, that on reference to the Order in Council, of the 7th of August last, made in relation to the Petition of John Rochester, to be allowed to purchase Lot No. 39 in broken front, Concession A, of the Township of Nepean, he finds that it was directed that the Order in Council of the 28th February, 1848, in favor of the applicant, be carried into effect, and that he be permitted to purchase at the rate of Fifty shillings per acre, with interest for that period; that on referring to the Order in Council, of 28th January, 1848, it appears he was authorized to purchase at the valuation of the District Agent; and further stating, that as it was the intention of the Committee that Mr. Rochester should be allowed to purchase at Fifty shillings an acre, with interest from 28th January, 1848, the Clergy Reserve Inspectors having valued the Lot at 40s. an acre, in 1844, without improvement, he would suggest that the Order in Council of the 7th August, be so amended as to leave that portion of it which refers to the Order in Council of 28th January, 1848, and it would then authorize the sale to Mr. Rochester, at the price of Fifty shillings an acre, with interest from 28th January, 1848.

The Committee recommend that the suggestion of the Attorney General be approved and carried out.

Certified.

(Signed,)

WM. H. LEE,  
Acting C.E.C.

The Honorable the Commissioner of Crown Lands,  
&c., &c., &c.

### No. 122.

Report of Committee of Executive Council, on Petition of City of Bytown, of N. Sparks, &c., 20th December, 1852.

Extract from a Report of a Committee of the Honorable the Executive Council, on Land Applications, dated 25th December, 1852, approved by His Excellency the Governor General in Council on the same day.

On the Petition of the Town Council of the Town of Bytown, dated 6th Decr. 1852, representing, in reference to the proposed sale to John Rochester, of Lot No. 39 in Concession A, in the Township of Nepean, that the said Lot was surveyed, by order of the Government in 1846, into City Lots and streets, regularly laid out and marked by stone boundaries; that the survey so made was the original survey, and that the streets so laid out are lawfully established highways, under the Act 10 and 11 Vic., cap. 43, and other statutes of the Province; and further representing, that with the exception of such streets, there are not in that part of Bytown any grounds reserved for public purposes, and praying that they may be permitted to purchase certain portions thereof, containing, exclusive of such streets,  $9\frac{1}{4}$  acres, at £5 per acre; and,

On the Petition of Nicholas Sparks, renewing his claim to the above mentioned lot, together with the Reports of the Commissioner of Crown Lands thereon respectively, dated 15th instant.

The Committee respectfully recommend, that the issue of the Patent be suspended until Mr. Rochester be written to, with a view of ascertaining if he will accept the Patent on the understanding that he shall have no claim against the Government, in the event of its being hereafter decided that any of the streets laid out under the said survey, are vested in the Corporation of Bytown; that it should also be intimated to Mr. Rochester, that he should at the same time procure the assent to this arrangement of Mr. Malloch, and all others to whom he may have disposed of any portion of his right in the property, and whose assignments are registered with the Commissioner of Crown Lands.

The Committee do not consider the claims of the squatters to be of such a character as to require special provision to be made for their benefit.

With reference to Mr. Sparks' claim, the Order in Council of 7th August last, leaves it to be settled between him and Mr. Rochester.

The Committee further recommend, that to avoid any possible difficulty that might arise in the mean time as to the right of parties to purchase the lots laid out under Order in Council of 22nd June, 1846, they be withdrawn from sale, and that the Agent of the Commissioner of Crown Lands at Bytown, be instructed to that effect, should it be necessary.

Certified.

WM. H. LEE.

To the Honorable  
The Commissioner of Crown Lands,  
&c., &c., &c.

## No. 123.

CROWN LAND DEPARTMENT, QUEBEC, 24th December, 1852.

Sir,—A Petition from the Town Council of Bytown, representing that the Streets, as laid down in the Survey of Lot No. 39, in Concession A, Nepean, made in 1846, are lawfully established Highways under the Act 10 & 11 Vic. cap. 43, and other Statutes of the Province; having been under the consideration of the Governor General in Council, on the 20th instant.

I am directed to ascertain whether you will accept a Patent for the Lot, on the understanding that you will have no claim against the Government in the event of its being hereafter decided that any of the Streets laid out under the said Survey are vested in the Corporation of Bytown, and you are at the same time required to

procure the assent to this arrangement of Mr. Malloch, and all others to whom you may have disposed of any portions of your right in the property, and whose assignments are registered in this Department.

I have the honor to be, Sir,  
Your obedient Servant,  
(Signed,)

JOHN ROLPH.

Mr. JOHN ROCHESTER.

## No. 124.

CROWN LAND DEPARTMENT, QUEBEC, 24th December, 1852.

Sir,—The Memorial of the Town Council of Bytown, dated the 6th instant, objecting to the proposed sale to Mr. Rochester, and representing that the Streets, as laid down in the Survey of Lot No. 39, in Concession A, of Nepean, made in 1846, are lawfully established Highways, and praying that they may be permitted to acquire a certain portion thereof, consisting of about nine and a fourth acres; having been under the consideration of the Governor General in Council, on the 20th instant.

I have the honor to inform you, that the issue of Patent to Mr. Rochester is to be suspended until it has been ascertained whether he (and those claiming under him) would accept the Patent upon the understanding that he shall have no claim against the Government in the event of its being hereafter decided that any of the Streets laid out in the said Survey are vested in the Corporation of Bytown.

A letter has, in consequence, been written to him to that effect.

I have the honor to be, Sir,  
Your obedient Servant,

(Signed,) JOHN ROLPH.

R. W. SCOTT, Esquire, Mayor of Bytown.

## No. 125.

CROWN LAND DEPARTMENT, QUEBEC, 24th December, 1852.

Sir,—Your Petition of the 15th instant having been under the consideration of the Governor General in Council, on the 20th instant.

I am to inform you, that the claim you make for a portion of Lot No. 39, in Concession A, Nepean, is left to be settled between you and Mr. Rochester.

I am, Sir,

Your obedient Servant,

(Signed,) JOHN ROLPH.

NICHOLAS SPARKS, Esquire, Bytown.

## No. 126.

CROWN LAND DEPARTMENT, QUEBEC, 24th December, 1852.

Sir,—The Petition of yourself and others, with reference to Lot No 39, in Concession A, Nepean, having been under the consideration of the Governor General in Council.

I am to inform you that your claims as Squatters are not deemed to be of such a character as to require the interference of the Government.

I am, Sir,

Your obedient Servant,

(Signed,) JOHN ROLPH.

Mr. RICHARD CLEARY, Bytown.

## No. 127.

BYTOWN, 7th January, 1853.

Sir,—I have the honor to acknowledge the receipt of your favor of the 24th ultimo, and in answer to the first paragraph, namely, whether I would accept of a Patent, with the understanding that I should have no claim on the Government, in the event of its being hereafter decided that any of the streets laid out under the survey made of Lot No. 39, in Concession A, Nepean, in 1846, are vested in the Corporation of Bytown.

In reply I beg to state, that it is just and reasonable that I should accept it with this understanding: and I hereby accordingly consent to do so; I may remark at the same time that I would have accepted the Patent in the first instance as the survey took place, but the Lot is contended as having been improperly surveyed by Mr. Bell, so that if I had accepted the Lot as surveyed, and failing to establish his boundary on the West side of the Lot, I could not under the survey go beyond the limits of the East side, thereby losing upwards of ten acres of land.

With respect to the last paragraph of your letter, namely; "It has been further ordered in Council, that a reservation of  $1\frac{1}{2}$  chains in width from high water mark along the whole front of the Lot be made, and also that part of the Lot required for public purposes."

I beg to state that the Board of Works have reserved about  $3\frac{1}{4}$  acres. This I advisedly hesitate not to say is more than they require, but contend respectfully that the Board of Works have a right to remunerate me for what they require, and which they can do without the slightest inconvenience to themselves, which I can point out to the Honorable Mr. Chabot.

I may however here remark that the Board of Works by letter officially through their Secretary, to the Deputy Commissioner of Crown Lands, Mr. Bouthillier, on the 30th March, 1846, reserved what they required, namely, the three quarters of an acre, and which is tinted red, on the plan they transmitted, why they should take three acres additional I cannot say; with respect to one and a half chains from high water mark, I humbly consider and beg respectfully to state that, of course the Government has the right to withhold my Patent, and to make any reservation they please, but I deny their right; I however earnestly entreat the Government not to consider me, either as ungrateful or unreasonable. But if this reservation is made, it will be tantamount to withholding from me the greater part of my lot, leaving but a narrow strip on the East side adjoining No. 40, besides withholding

from me the control of my own property, thereby leaving it optional for any person to build, dig or otherwise trespass on the part reserved, independent of me.

The Grand River rises every year but from four to five feet, and continues from one to three days. The lower part of this rock is a flat rock, consequently the high water covers about 15 or 17 acres, to the depth of from one to two feet. I would, I assure you, feel most anxious to relieve the Government from any pretended blame, that malicious representations might make with reference to the particular situation of the property.

It is urged that it is necessary to make a reservation for the use of the Lumber Trade. I hesitate not to assert that the Government has been most shamefully imposed upon by the representations that have been made, I would ask has there ever been a single reservation made on any lot from Quebec to Lake Huron for the use of the Lumber Trade? Not one! Has there ever been a single stick drawn across this lot? Not one! Before the slides were made the timber was run over the Big Kettle; and since the slides were made, every stick of timber, oars, and even the cooking utensils have been run through the slides, on the cribs.

The lower part of Lot 40 and 39, have been open as a common for these twenty years past, and must no doubt remain as such for twenty years to come; and to urge, as the Town Council have done, that I would shut up the whole Lot, and prevent the inhabitants from getting water, is an insult to the Government. If I did so I would be acting contrary to my own interests.

I would be willing that a clause should be introduced in the Patent, if the Government insist on it, that I, my heirs and assigns should now and at all times hereafter afford to the inhabitants of Bytown, and the public in general, ample street accommodation through the said Lot, to and from the water's edge of the River Ottawa, in the event of its ever being necessary to lay it out in Town Lots, and that until laid out in Town Lots, and even after, ample accommodation shall be afforded to all Lumberers to secure their rafts if necessary, while running the Government slides.

I have no hesitation in saying, that I could furnish you with evidence of several thousand respectable inhabitants of Bytown, that one inch of a reservation is unnecessary for the use of the Lumber Trade,—such proof I would consider would be an insult to the Government,—but I will simply refer to a single gentleman, Joseph Aumond, Esquire, who authorised me to state, and which I intimated to you, that he was willing to appear before you, and testify relative to the disgraceful conspiracy against me respecting the Lot in question.

I would confidently ask, would any one dare to impute improper motives to this gentleman; he never was under a fraction's obligation to me in his life; he has been repeatedly urged to allow himself to be elected for Bytown; he has lived in Bytown for nearly thirty years; he has been personally acquainted with the history of this Lot, from its earliest date, and has the largest lumbering interest in the Province of Upper Canada; and no one will presume to call in question, his known and universally admitted reputation and respectability.

I have, &c.,

JOHN ROCHESTER.

Bytown, 7th January, 1853.

I hereby assent and agree to the above proposed arrangement, contingent upon  $1\frac{1}{2}$  chain reservation being abandoned.

(Signed,) EDWARD MALLOCH.

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I have read the above letter, and feel myself in honor bound in justice to Mr. Rochester and Mr. Malloch, to state that I agree with its contents, except as far as it relates to my own praise.

BYTOWN, 7th January, 1853.

(Signed,) JOSEPH AUMOND.

## No. 128.

(Private.)

BYTOWN, 7th January, 1853.

My Dear Sir,—Mr. Rochester of, Bytown, has called upon me, begging of me to address you, respecting his claim for a certain tract of land in this vicinity.

From all I could learn, I have no doubt but he is justly entitled to the property: I have known him for years; I have much pleasure in saying, that he is an honest man; I consider him incapable of seeking to obtain what is not his right.

I trust you will excuse my trespassing on you in the matter.

I am, &c.,

(Signed,) JOHN EGAN.

To the Honorable JOHN ROLPH,  
Commissioner Crown Lands.

Mr. Rochester to Commissioner of Crown Lands.

QUEBEC, 17th January, 1853.

Sir,—Adverting to your letter of 24th December last, I beg herewith to hand you my reply of the 7th instant, which I trust may be considered satisfactory with reference to the intended reservation of  $1\frac{1}{2}$  chains from high water mark. I beg leave respectfully, for the information of His Excellency the Governor General, solemnly to protest against such reservation being made, as it will compel me to make and maintain a Fence along the whole reservation, and shut out my cattle from the water, besides taking off the greater part of my Lot to the mark tinted blue on the accompanying plan, which is swamp and low land.

The mark high water on the plan is not the correct one, but in some places goes to the blue mark, for several days in the year.

The part tinted yellow is low, swampy land, covered with trees and swamp timber, but would be made good meadow land and pasture land at low water. If this reservation was made, it would become a refuge for squatters, and grog shops for Raftsmen, and for other infamous characters, a full and official description of which is given your Department by A. J. Russell, Esquire, of Bytown, through John Durie, Esquire, your Crown Land Agent; besides in some parts below the swamp, being dug up in holes for quarrying stone, over which I could have no control.

If any reservation was necessary it would be on Lot 40, below the slides, where all the timber has to remain to be rafted, but one inch even there is unnecessary, for I never heard of a single complaint with respect to a reservation for a road along the Beach. I respectfully beg to state, that such a thing is out of the question, for it would be impossible to be made except on the high land, on the lower part of the Lot.

The Town and County Council, however, I respectfully submit, are the best judges where roads should be made, as they are for such purposes "clothed" with the necessary authority according to Law.

With respect to the representations from the Town Council of Bytown, I look

upon it as unworthy of notice. I believe the hint was given from Quebec to a Gentleman, who handed in a Memorial while the Town Council was sitting; it was taken up and adopted in the absence of R. W. Scott, Esquire, the Mayor, who, as he informed Mr. Malloch, objected to it as an improper interference, although, after refusing to sign it, he consented to do upon being pressed.

I assure you I feel most anxious to shield and protect the Government from any pretended blame that might be attached to them.

I am willing that any clause should be inserted in the Patent to compel me to afford to the inhabitants every necessary accommodation, by free access to and from the River, and also every ample and necessary accommodation for the Lumberers in running their Rafts through the slides.

Particular reference is particularly requested to the Certificate of Joseph Aumont, Esquire, at the bottom of my letter of the 7th instant, and also to the letter of John Egan, Esquire, attached hereto.

All which is respectfully submitted.

(Signed,) JOHN ROCHESTER.

CROWN LAND OFFICE.

Dear Sir,—Mr. Rochester and I are here, and I wish a plan of broken Lot No. 39, Nepean, so as to explain more fully a letter I intend to address you.

Mr. Russell has the plan made out, but I cannot obtain it without your special order; will you have the goodness to write "yes" to this? when can we see you?

Yours truly,

(Signed,) EDWARD MALLOCH.

Honorable Commissioner Crown Lands.

## No. 129.

### REPORT.

CROWN LAND DEPARTMENT, Quebec, January 24, 1853.

The Commissioner of Crown Lands has the honor of bringing under the notice of the Governor General in Council, the Order in Council of the 17th November, 1847, on the application of Kenneth McPherson, of Lancaster, submitted by the Honorable Peter McGill, on the subject of his right to certain Land Claims which he holds under certificates of unlocated authorities issued by the Surveyor General's Department in 1839. This Order in Council, after setting forth that the claims of McPherson "as set forth in his several petitions and letters were fully considered and disallowed by approved Minutes in Council on four several occasions, viz: on the 29th April, 1843, 26th May, 1845, 3rd September, 1845, and the 24th December, 1845," declares, that in order to prevent continued confusion and interruption of the public business, especially of the Crown Land Department, it is of great consequence that Orders in Council respecting claims for Land should be held to be final; and that no reconsideration should be permitted, except on the clearest evidence that such Orders had worked positive injustice.

In the case of the application of Messrs. Malloch and Rochester for Lot No. 39, Concession A, Nepean, they have submitted to the Commissioner several further documents for re-opening the late decision of the Government, and expressing dis-

satisfaction therewith: but the Commissioner sees in this case much reason not to deviate from the rule prescribed in the annexed Order in Council, by re-opening the case, unless invited to do so by the Government.

[Referred to the Committee of Council, 24th January, 1853.—Approved in Council, 31st January, 1853.—Communicated to C.C.L., 1st February, 1853.]

EXTRACT from a Report of a Committee of the Honorable the Executive Council, on Land applications, dated 17th November, 1847, approved by His Excellency the Governor General, in Council, same day.

"The claims of Mr. McPherson, as set forth in his several petitions and letters, were fully considered and disallowed by approved Minutes in Council, on four several occasions, viz: on the 29th April, 1843, 26th May, 1845, 3rd September, 1845, and 24th December, 1845.

"In order to prevent continual confusion and interruption of the public business, especially in the Crown Land Department, it is of great consequence that Orders in Council respecting claims to land should be held to be final, and that no reconsideration should be permitted, except on the clearest evidence that such Orders had worked positive injustice.

"The previous repeated consideration of the present claim is a sufficient reason for declining to re-open the subject, but were another reason required, it would be found in the Order in Council, dated 3rd September, 1845, where Mr. McPherson's claims are fully discussed and correctly disposed of.

"Certified.

(Signed,)

"J. JOSEPH, C.E.C."

Order in Council of 31st January, 1853.

In Committee, 29th January, 1853.

The Committee recommend that a Patent issue in favor of John Rochester or his assignee, in accordance with the Orders in Council of the 24th November and 20th December, 1852.

Approved in Council, 31st January, 1853.—(Communicated to C.L.C. next day.)

## No. 130.

[Nothing appears under this number in the manuscript.]

### No. 131.

EXTRACT from a Report of a Committee of the Honorable the Executive Council on Land Applications, dated 29th January, 1853, approved by His Excellency the Governor General in Council, on the 31st January, 1853.

On the Memorandum of the Commissioner of Crown Lands, representing that in the case of the application of Messrs. Malloch and Rochester, for Lot No. 39, Concession A, Nepean, they have submitted to him several further documents for re-opening the late decision of the Government, and expressing dissatisfaction therewith, but that he sees in this case much reason not to deviate from the rule prescribed in the Order in Council of 17th November, 1847, on the application of Kenneth McPherson, by re-opening the case unless invited to do so by the Government.

The Committee recommend that a Patent issue in favor of John Rochester or his Assignee, in accordance with the Orders in Council of the 24th November and 20th December, 1852.

Certified.

WM. H. LEE.

To the Honorable the Commissioner of Crown Lands,  
&c., &c., &c.

### No. 132.

QUEBEC, 5th February, 1853.

Sir,—We hereby consent to accept of the Patent for Lot No. 39, in Concession A, on the Ottawa, in the Township of Nepean, with the understanding that we will have no claim on the Government for compensation in the event of its being decided that the Streets in the Survey made in 1846, are vested by law in the Corporation of Bytown.

We have the honor to be, Sir,  
Your most obedient humble Servants,

(Signed,) "

JOHN ROCHESTER,  
EDWARD MALLOCH.

Honorable A. N. MORIN,  
&c., &c., &c., Quebec.

### No. 133.

It seems to me that the foregoing is in accordance with the Order in Council of 20th December last.

(Signed,) WM. B. RICHARDS.

5th February, 1853.

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## No. 134.

(Copy.)

QUEBEC, 7th February, 1853.

Sir,—With reference to the letters of the 7th and 17th January last, from John Rochester to the Honorable Commissioner of Crown Lands, and the Report of the Honorable the Executive Council, of the 31st ultimo, approved by His Excellency the Governor General, relative to the issue of the Patent for Lot No. 39, in Concession A, in the Township of Nepean, we respectfully beg to observe, for the information of His Excellency the Governor General, that we consider that justice has not been done us in the premises. In fact, under all the circumstances connected with this case, it is for the consideration of His Excellency, from the unprecedented course, contrary to law, that has been pursued in this matter, whether the Government has not compromised the honor of His Excellency the Governor General, and the dignity of the Crown. Mr. Rochester was entitled, under Imperial and Provincial Acts, to be allowed to purchase the lot in question. The lot was ordered to be surveyed in 1846, and advertised for sale, which we have no hesitation in saying, was a gross and unwarrantable intrusion upon the rights of private property, in defiance of the law of the land; and which appears did not originate with the Crown Land Department. The lot was subsequently purchased by Mr. Rochester, and who sold, for a valuable consideration, to Mr. Malloch, a part of his interest in the lot, with the knowledge and consent of the Honorable the Commissioner of Crown Lands, and other members of the Government.

The sale was carried out and the description issued, which was subsequently stayed, under the pretext that it was necessary for the Public Works to reserve a chain and a half along the whole frontage, although it was deliberately decided at one period after the sale, only to reserve one chain, and that in defiance of the official letters of the Board of Works, alluded to in the letters referred to.

Having understood that the Patent had issued, we visited Quebec and applied to the Honorable Commissioner of Crown Lands, to Mr. Spragge, Mr. Jones, and Mr. Hector, of the Surveyor General's Department, for information relative to the manner in which the lot was described. But, although it was then a public record of the Department, the Honorable Commissioner refused to afford us any information whatever, or to allow the officers of the Department to do so.

The Board of Works even refused to afford the information relative to the part of the lot required for the Public Works, although we were prepared to show that there had been official truckling discreditable to the Department respecting the part intimated as necessary to be reserved, containing nearly four acres on the north-east part of the lot. In a conversation we had the honor of having with His Excellency, he was pleased to remark that Mr. Rochester's claim being recognized, he had nothing to do with what might be deemed as necessary for the public interest, if that should interfere with private rights.

Understanding that the Patent issued in November last, and having been forwarded to you as Provincial Secretary, we called for the purpose of ascertaining the reason why it had not been completed; you informed us that the patent was held by you, not in your public capacity, but as a private individual, although the Commissioner of Crown Lands officially intimated that it had been forwarded to the Provincial Secretary.

We found that the Government had decided that the patent should not issue unless Mr. Rochester consented to accept of the patent, with the understanding that he should have no claim on the Government, in the event of its being ascertained that the streets made in the survey in 1846, were vested in the Corporation of Bytown, and hence our letter to you of the 5th instant.

We have, however, ascertained that a new Patent is ordered to issue, and that the chain and one-half reservation is still persisted in, in defiance of the proof fur-

nished that it is unnecessary for the Public Works, and that even the full consideration money paid for the purchase of the lot, is not included in the deed.

There seems to have been such a system of secrecy pursued on the part of the Government, that it appears to justify the construction of studied fraud.

Under these circumstances, we consider that our letter to you, of the 5th instant, has been extorted from us, and protest against the course the Government are pursuing, and beg to signify our determination not to consent to the patent issuing on the terms proposed, which we can not characterize but as in an unprecedented, secret, underhand, and discreditable manner; we therefore pray that the description may issue in our favor for the chain and one-half which is intended to be reserved, and that the part necessarily required for the Board of Works on the N. E. corner of the lot may be paid for by them to us.

All which is respectfully submitted, by your obedient and humble Servants,

(Signed,)

JOHN ROCHESTER,  
EDWARD MALLOCH.

The Honorable A. N. MORIN,  
Provincial Secretary.

## No. 135.

### Report on the necessity of certain Reservations being made in Broken Front, Lot No. 39, Ottawa Front, Township of Nepean.

A Reservation of at least a chain and a half in width, from the highest watermark, along the whole front of the above mentioned Lot, is absolutely necessary, alike for the purposes of the lumber trade of the River Ottawa, and for the convenience of the inhabitants of Bytown.

It is the only place where cribs of timber can be brought to land, before descending the slides, on the South side of the River.

Such access is necessary to admit of the raftsmen going ashore to return to the head of the Rapids, to continue their work in taking down cribs, and for other purposes, (a greater number of men, including the more expert hands, being necessary in bringing the cribs down the Rapids above the Slides than in descending the latter,) and also for the landing and carting up again of their oars, in which a considerable number of teams are occasionally employed.

The number of cribs that accumulate along the ground to be reserved is sometimes very great, filling the shore of the Bay completely up. On one occasion last season, the timber of twenty different individuals had to be brought to land there in one day, for the purpose of being reported to the Slide-Master, as required by the first clause of the Slide Regulations, established by Order in Council, to which we beg to refer, and which renders their coming to land here, in all cases, absolutely necessary.

In all cases, also, in which cribs become deranged or partially broken up, in running down the Little Chaudière Rapids, above, they must be brought to land here, and repaired, before running the Slides; otherwise, they would be completely wrecked, and the timber get adrift. When this takes place, it not only occasions great loss of time to the lumberers, but the use of the Slides is liable to obstruction, and their structure to injury, by pieces of timber getting fast and causing jams.

Besides the access to the land, and thoroughfare thereby, the reserve mentioned is required to lay timber upon, delivered for building purposes, for the use of the

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Town, and for the works on the water-power immediately below; and large quantities of saw-logs are required to be laid there occasionally, when they have to be drawn over land to the mills below, at times when they cannot be allowed to be sent down the Slides, owing to the passing of square timber.

Such is the case now, and the necessity will increase as the Town and the Works on the River increase, especially as regards timber for building.

This will be the more apparent when it is considered that the proposed reserve is the only place along the whole shore of the Ottawa opposite Bytown, where timber can be drawn from the River up into the Town with any advantage, as the slope of the land to the River and into it, in this place only, is very gentle, the shore being elsewhere steep or precipitous, generally from fifty to a hundred feet in height, presenting in the distance of upwards of two miles below, only four passable descents to the water-edge, all of them too steep for taking timber up; the only other practicable passage—that down the Locks of the Rideau Canal, (and even that falls eighty-three feet in a short distance,)—being shut up from the public by the Ordnance Department.

The full extent of the inconvenience that may arise from want of sufficient access to the water-edge is not at present felt, owing to the smallness as yet of the Town; but what it will be when Bytown becomes a City of considerable magnitude, to which it is rapidly rising, may be easily imagined.

Also, as the Town is on a high and rocky site, a sufficient supply of water from wells is not easily obtained, and as the water, from being hard, is unfit for washing and culinary purposes to a certain degree, for such uses the Town has to be supplied chiefly from the River, and all that is got from it for use in the Upper Town is carted from the River through the reserve in question, for which purposes it is necessary not only that the reserve itself, but also that the right of way through Lot No. 39, as now used, to give direct access to the water, should be retained.

From what has been already said, it will be apparent that the consequences of further restricting the already limited access to the water-edge, in a Town so situated, may be exceedingly serious in cases of dangerous fires.

Besides the reserve mentioned, and the right of way to it at each end, it is of equal importance that a reserve of at least two hundred and fifty feet in width, should be made through Lot No. 39, for a Canal to connect the navigable waters of the Ottawa above and below Bytown. The facilities presented for constructing such a work, by the form of the ground, the valuable quality of the rock as building material, and the nature of the bed of the River where it should be made use of, are very great.

The obstructions to navigation immediately above Bytown are embraced within a distance of five and three-quarter miles. They consist of the Chaudière Falls, above the Town, which make a difference in level of thirty-three feet; the Little Chaudière Falls, at three-quarters of a mile further, of about ten feet; a Rapid, called the Remicks, falling about two feet, at about a mile and a half further, with two miles of still water above it; and last, the Falls at Britannia, of about eight feet, immediately at the lower end of the Chuts Lake.

These obstructions would be best overcome by constructing a Canal from the head of an Inlet below the Chaudière Falls, to the Bay above, a distance of three-quarters of a mile, passing for forty-two and a half chains through Lot No. 40, and for seventeen and a half chains through the Lot No. 39, in question, and continuing the Canal upwards in the bed of the River as will be afterwards described.

For one-quarter of the distance to the Bay very little excavation is necessary, and the deepest cutting in the remainder might be nine feet, seven of which would be rock excavation.

This rock excavation would be a source of economy instead of expense, for as the stone is of a superior quality, builders would remove it free of cost to the public if permitted, were it not required for constructing the Canal. Upwards of two thousand toises of this stone were taken from Lot No. 39 within a year past, and the parties have to pay for permission to take it.

Above this cutting, the Canal could be best constructed in the bed of the River, by parallel walls of stone, without mortar, lined on the inside, under the water, with thick plank, to prevent such leakage as might create a current. As the River is generally shallow, and the bed of it flat rock, such walls twenty feet broad, and on an average, fifteen feet high from the foundation, would be perfectly secure, and sufficiently high to keep the Spring floods from washing over. Such walls are found to retain the water sufficiently at as great a difference of level as would be required.

In the mode of structure, as well as in the excavation, additional width would be attended with little or no increase of expense. The Canal should, therefore, be made wide, to admit of much water from it being let for milling purposes and for hydraulic works, for supplying Bytown with water, for which very necessary object the foot of the Canal would afford a most unusually advantageous site.

The flooded land, also, that would be made where the Canal would be built on the Bay above Bytown, would be exceedingly useful as a pond to contain saw-logs for the mills on the hydraulic lots below; such a thing is very much required, as without it there is no adequate space for stowing logs for the mills that will be constructed there.

A mile and three-quarters of Canal so constructed, in addition to the three-quarters of a mile first described, would be sufficient to overcome the obstructions to the head of the Remicks Rapids; and half a mile more at Britannia, chiefly excavation, would overcome all the obstructions to the Chuts Lake. The total rise in that distance would be about sixty-two feet.

This would complete the navigation to the distance of thirty-five miles above Bytown, and cause a very great increase of the trade of the Ottawa in sawn lumber; rendering the magnificent and unlimited water power at the Chuts Falls even more valuable than the Falls at Bytown for milling purposes, besides conferring great commercial benefit in other respects on the Villages and Settlements on the River, by giving them the means of direct communication with the Ports on the St. Lawrence, and with the United States.

Were the communication extended to Portage du Fort, sixty miles above Bytown, by the construction of three miles of Canal at the Chuts Falls and Rapids, the benefit would be proportionally increased, and with it the importance of a Canal at Bytown, for which the reservation is proposed.

To recur to the importance of the reserve along the Bay on Lot No. 39, with respect to the Slides, we would most respectfully remark, that it is held to be of unquestionable importance that there should be reserves, and they have accordingly been made to great extent about all the other Government Slides on the Ottawa, though of much less importance than the reserve in question, even as regards the convenience of the lumber trade alone, and such a reserve is now about to be purchased round the shore of the Gatineau Timber Pond and its outlet.

This being the case, it would seem to be absurd now to dispose of the reserve at Bytown, where the quantity of timber passing, and the necessity for the reserve is consequently greater. It would be altogether stultifying the proceedings hitherto of the Department of Public Works with respect to all such reserves, besides in this particular case sacrificing the interest of the inhabitants of Bytown; and were the reserve in question alienated, we would feel constrained by a sense of duty, to recommend that immediate steps should be taken for the purchasing of it back

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again, in order that the Ottawa Lumberers and the Inhabitants of Bytown might not have to depend for the use of it on the mere forbearance of the owners, who might set it up against the public whenever their caprice or interest dictated such a course.

All which is most respectfully submitted.

(Signed,)

HORACE MERRILL,  
A. J. RUSSELL.

Bytown, 5th April, 1853.

To the Honorable the Commissioner of Crown Lands,  
Quebec.

### No. 136.

QUEBEC, 25th April, 1853.

Sir,—I have just received a letter from Mr. Rochester of Bytown, informing me that several parties are quarrying stones on our Lot,—that is on the chain and an half for which the Patent has not as yet issued—namely, Lot 39, in Concession A, on the Ottawa, in the Township of Nepean.

I beg respectfully to observe for the information of His Excellency the Governor General, that when the Patent issued for part of the Lot, Mr. Rochester and I protested on the 7th February last, in a letter addressed to you.

Mr. Rochester states that the parties he thinks are trespassing under advice from A. J. Russell, Esquire, of the Crown Timber Office at Bytown.

That he went and complained to the Town Council, who sent the High Constable, and that the parties treated the Order of the Town Council with contempt.

The Lot which was purchased and paid for is of no use whatever to us without the Beach.

We therefore intend to take steps under advice.

I therefore, in the meantime, request that the Honorable the Attorney General may be ordered to issue his fiat for a Commission in favor of Judge Armstrong, Judge of the County Court, to stop the trespass on the Beach, in pursuance of the Act, as I intend to proceed for Bytown immediately, otherwise I fear unpleasant consequences.

I have the honor to be, Sir,

Your obedient Servant,

(Signed,) EDWARD MALLOCH.

Honorable A. N. MORIN,  
&c., &c., &c.

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